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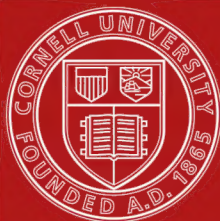
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DIGEST

OF THE

OPINIONS OF THE ATTORNEYS GENERAL

OF THE

UNITED STATES,

WITH REFERENCES TO LEADING DECISIONS OF THE SUPREME COURT.

BY C. C. ANDREWS,
COUNSELLOR AT LAW.

WASHINGTON:
WILLIAM M. MORRISON & CO.
1857.

INTRODUCTION.

This Digest was made at the request of the late Secretary of the Treasury, Hon. JAMES GUTHRIE, for the use, principally, of the officers connected with the Treasury Department. It includes all the decisions of the Attorneys General from the beginning of the general government to within a year of the present time.

It can hardly be necessary to say anything to show the importance, as legal authority, of the official opinions of the Attorneys General. They consist of commentaries on the Constitution and the public laws by some of the ablest jurists and most upright men who have adorned the American bar. Those opinions "officially define the law, in a multitude of cases, where his decision is in practice final and conclusive, not only as respects the action of public officers in administrative matters, who are thus relieved from the responsibility which would otherwise attach to their acts, but also in questions of private right, inasmuch as parties, having concerns with the government, possess in general no means of bringing a controverted matter before the courts of law, and can obtain a purely legal decision of the controversy, as distinguished from an administrative one, only by reference to the Attorney General.

"Accordingly, the opinions of successive Attorneys General, possessed of greater or less amount of legal acumen, acquirement, and experience, have come to constitute a body of legal precedents and exposition, having authority the same in kind, if not the same in degree, with decisions of the courts of justice.

"It frequently happens that questions of great importance, submitted to him for determination, are elaborately argued by counsel; and, whether it be so or not, he feels, in the performance of this

part of his duty, that he is not a counsel giving advice to the government as his client, but a public officer, acting judicially, under all the solemn responsibilities of conscience and of legal obligation."—(Opinions, vol. 7: 334.)

Illustrating, as they do, the duties of the President and heads of departments, and the uniform practice and operation of every branch of the government, the opinions are obviously indispensable to public officers. At the same time they are the best if not the only source from which the statesman and the general reader can derive a knowledge of the construction of treaties, adopted and adhered to by the United States, and of the political relations which have existed between the United States and foreign nations, and between the several States and the United States.

This Digest is designed, also, to aid the researches of the professional student in those branches of municipal, statute, and common law, which often enter into the practice of the profession. To render it more serviceable in this behalf references have been made to leading cases in the Supreme Court.

In conclusion, the author can only express the hope that its usefulness will bear some proportion to the labor he has bestowed in its preparation.

C. C. ANDREWS.

March 26, 1857.

ALPHABETICAL LIST OF THE ATTORNEYS GENERAL OF THE UNITED STATES, WITH THE TERM OF THEIR APPOINTMENT, AND A DESIGNATION OF THE VOLUME OF PUBLISHED OPINIONS IN WHICH THE OPINIONS OF EACH ARE EMBRACED.

- BERRIEN, JOHN M., of Georgia, from March 9, 1829, to July 20, 1831.—(Vol. 2: 197-449.)
- BRADFORD, WILLIAM, of Virginia, from January 27, 1794, to December 10, 1795.—(Vol. 1: 39-58.)
- BRECKINRIDGE, JOHN, of Kentucky, from August 7, 1805, to January 20, 1807.—(Vol. 1: 153-158.)
- BUTLER, BENJAMIN F., of New York, from November 15, 1833, to September 1, 1838.—(Vol. 2: 589-733; vol. 3: 1-371.)
- CLIFFORD, NATHAN, of Maine, from October 17, 1846, to March 18, 1848.—(Vol. 4: 537-720.)
- CRITTENDEN, JOHN J., of Kentucky, from March 5, 1841, to September 13, 1841, and from July 22, 1850, to March 4, 1853.—(Vol. 3: 627-655; vol. 5: 245-685.)
- CUSHING, CALEB, of Massachusetts, from March 5, 1853, to March 7, 1857.—(Vols. 6 and 7, entire.)
- GILPIN, HENRY D., of Pennsylvania, from January 11, 1840, to March 5, 1841.—(Vol. 3: 495-627.)
- GRUNDY, FELIX, of Tennessee, from September 1, 1838, to January 11, 1840.—(Vol. 3: 373-494.)
- JOHNSON, REVERDY, of Maryland, from March 8, 1849, to July 22, 1850.—(Vol. 5: 79-244.)
- LEE, CHARLES, of Virginia, from December 10, 1795, to March 5, 1801.—(Vol. 1: 61-93.)
- LEGARÉ, HUGH S., of South Carolina, from March 5, 1841, to June 20, 1843.—(Vol. 3: 657-751; vol. 4: 1-183.)
- LINCOLN, LEVI, of Massachusetts, from March 5, 1801, to August 7, 1805.—(Vol. 1: 95-151.)

- MASON, JOHN Y., of Virginia, from March 6, 1845, to October 17, 1846.—(Vol. 4: 357-535.)
- NELSON, JOHN, of Maryland, from July 1, 1843, to March 6, 1845.—(Vol. 4: 185-356.)
- PINKNEY, WILLIAM, of Maryland, from December 11, 1811, to February 10, 1814.—(Vol. 1: 169-173.)
- RANDOLPH, EDMUND, of Virginia, from September 26, 1789, to January 27, 1794.—(Vol. 1: 17-38.)
- RODNEY, CÆSAR A., of Delaware, from January 20, 1808, to December 11, 1811.—(Vol. 1: 159-168.)
- RUSH, RICHARD, of Pennsylvania, from February 10, 1814, to December 16, 1817.—(Vol. 1: 175-208.)
- TANEY, ROGER B., of Maryland, from July 20, 1831, to November 15, 1833.—(Vol. 2: 451-588.)
- TOUCEY, ISAAC, of Connecticut, from June 21, 1848, to March 8, 1849.—(Vol. 5: 1-78.)
- WIRT, WILLIAM, of Virginia, from December 16, 1817, to March 9, 1829.—(Vol. 1: 209-735; vol. 2: 1-195.)

CONTENTS.

A

ACCOUNTS--	Page_
I. GENERALLY	1
II. SETTLEMENT OF ACCOUNTS.....	8
III. RE-EXAMINATION OF ACCOUNTS.....	12
IV. WHEN FINALLY CLOSED.....	14
ACTION	16
ADVERTISEMENT	18
ALIEN	18, 19
ANNUITIES.....	20
APPEAL	20, 21
APPOINTMENT—	
I. GENERALLY	22-28
II. DURING A RECESS OF THE SENATE	29
III. TENURE.....	30
APPROPRIATIONS—	
I. GENERALLY	31
II. TRANSFER OF APPROPRIATIONS.....	33-35
ARCHIVES.....	36
ARKANSAS	36
ARREST	37
ASSETS	38
ATTACHMENT	38
ATTORNEY	39
ATTORNEY GENERAL.....	40-43
AUDITOR.....	44
AVERAGE	44

B

BAIL	44
BANK—	
I. BANK OF THE UNITED STATES.....	45
II. OTHER BANKS	46

	Page.
BANKRUPT	47
BILLS OF EXCHANGE	47
BONDS—	
I. OFFICIAL BONDS	48
II. OTHER BONDS	50
BREVETS	52
BUILDINGS	53

C.

CADETS	54
CANAL	56
CERTIFICATE	57
CITIZENSHIP	57
CIVIL POWER	58
CLAIMS—	
I. GENERALLY	59
II. FOR SERVICES	67
III. OF STATES AND CORPORATE BODIES	70
IV. UNDER TREATIES AND THE LAWS OF NATIONS	72
V. PAYMENT TO WHOM TO BE MADE	76
VI. POWER OF SECRETARY OF THE TREASURY TO ALLOW	78
VII. HOW BARRED	79
CLERK	81
COLONIZATION	81
COMMISSIONER	82
COMPENSATION—	
I. GENERALLY	84
II. OF CIVIL OFFICERS OF THE GOVERNMENT	88
III. OF OFFICERS OF THE ARMY AND NAVY	95
IV. OF EMPLOYEES OF THE GOVERNMENT	109
V. OF SOLDIERS AND MARINES	113
VI. WHEN IT COMMENCES	115
CONGRESS	117
CONSTRUCTION	118
CONSUL	122
CONTRACT—	
I. GENERALLY	128
II. PARTIES TO CONTRACTS	134

CONTENTS.**IX****CONTRACT—Continued.**

	Page.
III. CONTRACTS WITH NAVY DEPARTMENT	135
IV. CONSTRUCTION OF CONTRACTS	139
V. LIABILITY OF UNITED STATES UNDER CONTRACTS	141
CONVICT	144
COPYRIGHT	144
COURTS—	
I. GENERALLY	150
II. COURTS OF THE UNITED STATES	153
III. JURISDICTION	155
IV. COURTS-MARTIAL	158
V. FOREIGN COURTS	165
CONSTITUTIONAL LAW	167
CONSTRUCTION	168
CRIMES	169
CUSTODY	172
CUSTOM	172

D.

DAMAGES	173
DEATH WARRANT	174
DEBTORS	175
DEMURRAGE	176
DEPARTMENT	176
DEPOSIT	177
DESCENT	178
DIPLOMACY	180
DISTRICT ATTORNEY—	
I. GENERALLY	180
II. COMPENSATION OF	181
DOMICILE	184
DOWER	185

E.

ELECTION	185
EMBEZZLEMENT	185
EMINENT DOMAIN	186
ENLISTMENTS	188
ERROR	190

EVIDENCE—	Page.
I. GENERALLY	191
II. ADMISSIBILITY OF	192
III. EVIDENCE BEFORE THE EXECUTIVE DEPARTMENTS	193
EXECUTION	195
EXECUTORS AND ADMINISTRATORS	196
EXPLORING EXPEDITION	199
EXTERRITORIALITY	199
EXTRADITION—	
I. FUGITIVES FROM JUSTICE	200
II. FUGITIVES FROM SERVICE	204

F.

FLORIDA	207
FOREIGNER	207
FORFEITURE	208
FUNDED DEBT	209
FUNDS (PUBLIC)	210

G.

GARNISHEE	211
GENERAL AVERAGE	212
GRANT—	
I. GENERALLY	212
II. OF INDIAN LANDS	217
III. GRANT OF LANDS FROM THE UNITED STATES TO THE SEVERAL STATES FOR PUBLIC PURPOSES	218

H.

HABEAS CORPUS	222
HARBORS	223
HOSPITAL	225

I.

ILLINOIS	226
INDIANS—	
I. GENERALLY	227
II. THEIR CIVIL POWERS	231
III. TREATIES WITH INDIANS	234

INDIANS—Continued.	Page.
IV. AS TO INDIAN RESERVATIONS.....	237
V. INDIAN COURTS	242
INFORMERS	244
INSANITY	244
INSOLVENCY	245
INTERIOR DEPARTMENT.....	246
INTEREST—	
I. GENERALLY	247
II. WHEN THE GOVERNMENT WILL PAY INTEREST.....	248
III. WHEN THE GOVERNMENT WILL NOT PAY INTEREST.....	251

J.

JURISDICTION.....	253.
-------------------	------

L.

LANDS—

I. GENERALLY ; AND HEREIN OF GOVERNMENT LANDS OTHER THAN PUBLIC. . .	254
II. EXTINGUISHMENT OF INDIAN TITLES.....	259
III. SURVEYS—	
1. Generally.....	260
2. Surveyor general.....	261
IV. DISPOSAL OF LANDS BY THE GOVERNMENT—	
1. Donations	262
2. Public sales.....	263
3. Private sales.....	266
4. Pre-emption.....	267
5. Bounties for military services ; and herein of bounty land war- rants and their location	275
V. LAND OFFICES—	
1. Generally	280
2. General Land Office.....	280
3. Registers and receivers	281
VI. PATENTS—	
1. Generally.....	282
2. Issue of patents.....	285
3. Validity of.....	289
4. Location.....	290
5. Certificates.....	291
6. Confirmation of title.....	291

LANDS—Continued.	Page.
VII. TRESPASSES ON PUBLIC LANDS—	
1. Generally.....	292
2. Removal of trespassers.....	293
VIII. IMPROVEMENTS ON LANDS.....	294
IX. AS TO SALT SPRINGS AND MINERALS.....	294
X. SALE OF LANDS FOR TAXES.....	296
LARCENY.....	297
LAW OF NATIONS.....	298
LEASE.....	304
LEGACIES.....	304
LIABILITY.....	305
LIBEL.....	306
LIMITATION.....	307
LOANS.....	309
LOCALITY.....	309

M.

MARRIAGE.....	309
MARSHAL—	
I. GENERALLY.....	310
II. COMPENSATION.....	313
MEDAL.....	315
MICHIGAN.....	315
MILITARY ACADEMY.....	316
MILITIA.....	317
MINES.....	317
MINISTER.....	318
MINT.....	325

N.

NAVY—	
I. GENERALLY.....	326
II. ENLISTMENT.....	330
III. CONTRACTS WITH NAVY DEPARTMENT.....	331
NAVY AGENT.....	332
NEGROES.....	333
NEUTRALITY.....	334

O.

OFFICE.....	340
-------------	-----

	Page.
OFFICER	341
OFF-SET.....	344

P.

PARDON	345
PARTNERSHIP.....	349
PATENTS FOR INVENTIONS.....	350
PAYMENT.....	355
PENSIONS—	
I. GENERALLY ; AND HEREIN OF “LINE OF DUTY”	359
II. UNDER THE ACT OF 1828.....	370
III. UNDER THE ACT OF 1830.....	370
IV. UNDER THE ACT OF 1836.....	370
V. REVOLUTIONARY PENSIONS.....	371
VI. INVALID PENSIONS.....	374
VII. WHO ARE ENTITLED TO BOUNTY LANDS	376
VIII. COMMISSIONER OF PENSIONS.....	377
IX. PENSION AGENTS.....	378
PIRACY	379
POLITICS	380
POSSE COMITATUS.....	380
POST OFFICE DEPARTMENT—	
I. GENERALLY	381
II. POSTAGE.....	384
III. MAIL CONTRACTS	386
PRACTICE	387
PREROGATIVE.....	390
PRESENTS	391
PRESIDENT OF THE UNITED STATES—	
I. GENERALLY	392
II. AS TO THE EXECUTION OF THE LAWS—	
1. Generally.....	398
2. Power as to suits and processes in which the United States are interested	400
3. Appointing power.....	401
4. Pardoning power	403
PRINCIPAL AND AGENT	405
PRINTING.....	406
PRIVATEER	406

	Page.
PRIVILEGE—	
I. GENERALLY	407
II. FRANKING PRIVILEGE.....	407
PRIZE	408
PRIZE AGENT	410
PROCESS	410
PUBLIC BUILDINGS.....	412
PUBLIC LANDS	412
PUNISHMENT	413
PURPRESTURE.....	414
PURSER	414

Q.

QUARANTINE	415
------------------	-----

R.

RECEIPTS	415
REGISTRY	416
RECORDS	417
REAL ESTATE	417
REMOVAL	417
REPRISALS	418
RESERVATION	419
RESIGNATION	419
REVENUE LAWS—	
I. GENERALLY	420
II. DUTIES.....	424
III. DRAWBACKS	426
IV. REVENUE OFFICERS—	
1. Collectors.....	426
2. Other revenue officers.....	428
RIVER AND HARBOR	430
ROADS	430
ROGATORY COMMISSIONS	430

S.

SALVAGE	431
SEAMEN.....	433
SEIZURE	436

	Page.
SIGNATURE	437
SITES	437
SLAVES—	
I. GENERALLY	438
II. ABDUCTION OF	441
SLAVE TRADE	442
SMITHSONIAN INSTITUTION	445
SOLDIERS	445
STATE DEPARTMENT	446
STOLEN GOODS	448
STOPPAGE IN TRANSITU	449
STOREKEEPERS	449
SURETIES—	
I. GENERALLY	450
II. HOW DISCHARGED	452
SURVIVORSHIP	453
SUTLER	453

T.

TAXES	454
TERRITORIES	455
TITLE	458
TOWN SITES	458
TREASON	459
TREASURER OF UNITED STATES	459
TREASURY DEPARTMENT—	
I. GENERALLY	460
II. SOLICITOR OF THE TREASURY	464
TREATIES	466
TRUSTEE PROCESS	470

U.

UNITED STATES	471
USAGE	474

V

VESSEL	475
VICEROY	478
VIRGINIA	478

W.

	Page.
WAR DEPARTMENT.....	479
WASHINGTON CITY.....	482
WHARVES.....	485
WILLS	486
WISCONSIN	487
WITNESSES..	488

DIGEST OF OPINIONS OF ATTORNEYS GENERAL.

ACCOUNTS.

I. GENERALLY.

II. SETTLEMENT OF ACCOUNTS.

III. RE-EXAMINATION OF ACCOUNTS.

IV. WHEN FINALLY CLOSED.

I.—GENERALLY.

1. The act of April 24, 1816, authorizing certain charges for forage for horses, servants, &c., for certain officers, is prospective in its operation, and refers only to the act of 3d March, 1813, for a standard to govern the subject in future.—(1: 468.)

2. The accounting officers will not be justified in admitting as an offset to an amount due from an individual, on a contract with the Navy Department, an amount found due to such individual by a jury in Kentucky. The finding of the jury is not *per se* such an establishment of a claim against the United States as to justify accounting officers in admitting it as a set off.—(1: 589.)

3. To allow a set-off is, in effect, to make payment of the claim set up against a debt due the United States, and unless the accounting officers would be justified in paying it as a separate and independent claim, they cannot properly allow it as a set-off.—(*Ibid.*)

4. The security for a debt to the government, however ample it may be, is not a payment, and the Auditor should not so consider it.—(1: 592.)

5. The accounting officers may receive depositions, taken on notice, as proof of the items of an account.—(1: 596.)

6. Such officers must act upon the accounts in the first instance. They must pass upon them so that there shall be decisions to be approved or disapproved by the President, whose power is only appellate in its nature.—(*Ibid.*)

7. Although it is the duty of the President to take care that the laws be faithfully executed, he is not required to audit and allow public accounts, but to see that the officers assigned to that duty perform it faithfully. The Auditors and Comptrollers are assigned to that duty. They constitute the accounting department, and so long as they continue to discharge their duties faithfully the President has no authority to interfere.—(1: 624.)

8. The judiciary cannot interfere with the executive business of government, specially devolved upon it by the legislature or by the Constitution. Yet there are cases when officers of the treasury should heed the injunctions of a court.—(1: 681.)

9. Where a sutler of the army administered upon the estate of certain deceased soldiers—*held* that he was entitled, not as administrator, but as creditor of such soldiers, to have his accounts examined by the accounting officers of the treasury, and to be paid the amounts respectively ascertained to be due, if the balance due the soldiers shall, in each case, be adequate.—(2: 209.)

10. The late commissioners to hold treaties with the Chickasaw and Choctaw Indians are not bound to account to the government for the depreciation of the money deposited by them in bank to the credit of the Treasurer of the United States.—(2: 346.)

11. Where a contractor with the government to deliver a certain quantity of timber by a time specified failed in respect to time, and suffered a forfeiture of ten per cent. thereby, which the Fourth Auditor and Second Comptroller retained from his account, it cannot be refunded to him except by authority of Congress.—(2: 480, 481.)

12. When such contracts have been made, the rights of the parties under them become at once vested, and it is not in the power of the agents to modify or release them.—(*Ibid.*)

13. In settling the accounts and ascertaining the balance, the accounting officers must be guided by the instrument itself. Neither the Auditor nor the Comptroller can absolve contractors from any of the stipulations contained in their contracts, however severely they may be supposed to bear upon them.—(*Ibid.*)

14. The acts of former Secretaries of War are sufficient, until reversed or countermanded, to authorize and require the accounting officers to settle and audit the claim of General Parker for an allowance to the amount of two thousand four hundred and sixteen dollars, in lieu of quarters and fuel.—(2: 652.)

15. Set-off differs from lien, inasmuch as the former belongs exclusively to the remedy, and is merely a right to insist, if the party

thinks proper to do so, when sued by his creditor, on a counter demand, which can only be enforced through the medium of judicial proceedings; whilst the latter is, in effect, a substitute for a suit.—(2: 677.)

16. Where there is a conflict of claims between an executor and his assignees for an award of moneys by the Third Auditor to the decedent, the treasury officers should pay the same to the executor, who is the legal representative.—(3: 29.)

17. Where assignments in due form are presented, and no objection is made to the right of the assignee, it may be paid to him.—(*Ibid.*)

18. Where a question concerning a doubtful allowance has been submitted to Congress, and an actual appropriation made by that body of the precise amount, there can be no valid objection to the payment.—(3: 168.)

19. The accounts of marshals certified by the court, or one of the judges thereof, as provided in the fourth section of the act of May 8, 1792, are conclusive upon the accounting officers of the treasury, except in cases where charges shall be allowed by the court or judge for a service or purpose not mentioned in the acts of Congress, and where a greater sum shall be allowed than that fixed by law.—(3: 316.)

20. As to whether a charge of two dollars for serving a writ of subpoena is proper, it is not perceived that there is any legal warrant for excepting it from the enacting words of the statute giving that compensation for the service of any process, &c.—(*Ibid.*)

21. The account of the marshal of the District of Columbia for extra allowances to government witnesses on the trial for the burning of the treasury buildings, made by the circuit court, and certified, cannot be legally paid, notwithstanding the certificate, for the reason that no act of Congress authorizes payment of charges for such a purpose.—(3: 318.)

22. The accounting officers may allow an account, if it be a just one, of C. J. I., district attorney of the eastern district of Pennsylvania, notwithstanding his having been sued by the United States for various bonds placed in his hands for collection for moneys received thereon, and for other moneys, (his account not having been set-off in the suit,) and a judgment recovered by the United States against him for \$3,975 78, the same as if it were presented prior to the institution of that suit; as the said account was a matter separate and distinct from the subject-matter of the suit, and a set-off not having been required to be made.—(3: 345.)

23. Where a marshal received, in due course of law, processes of summons and subpœna for the same witnesses, (it being the usual mode of procuring the attendance of witnesses in the court from which they issued,) and served the same as required, he is entitled to his fees for both services on their being allowed and certified by the district judge.—(3: 496.) •

24. In a matter of general and established practice, the regular taxation of the costs, and their allowance in due form by district judges, are binding and conclusive upon the accounting officers.—(*Ibid.*)

25. Where the acceptance of a Postmaster General had been given in payment of an account for work done, and the amount thereof had been re-charged by a subsequent Postmaster General, *held* that the amount of the acceptance ought not to be deducted from an account current for other work.—(3: 624.)

26. The accounting officers have authority to reconsider a matter that had passed from the executive department to the legislative, under and pursuant to the act of March 3, 1841, chapter 18, § 2.—(3: 731.)

27. They are directed to settle and adjust the accounts of the claimants under a contract alleged to have been made on the 12th of June, 1838, for subsisting and emigrating the Cherokee Indians, upon principles of equity and justice; but, in settling them, the contract of the claimants with the United States of the 27th of June, 1838, must be taken into consideration.—(*Ibid.*)

28. There are no obligations resting upon the government to indemnify claimants for an amount of provisions beyond what might be necessary for furnishing six thousand Indians during the probable period of their journey.—(*Ibid.*)

29. The contractors are entitled, in strict law, to the difference between the contract price of the provisions they were bound to furnish and the actual value or market price of them in the country where they were to be supplied; but, by the act of 3d March, 1841, the accounting officers are bound to call for proof that the provisions were actually procured to be furnished, and loss on them actually sustained, before making any allowance whatever.—(*Ibid.*)

30. The act of March 3, 1841, which is a positive enactment specially applicable to the case, so far alters the common rule upon the subject of damages for breach of an executory contract, as to supersede that rule, and must govern the department.—(*Ibid.*)

31. The Third Auditor has exclusive jurisdiction over the accounts

and claims for horses and other property destroyed in the military service, under the act of January 31, 1837.—(4: 16.)

32 The officers of the treasury are authorized to withhold the pay of officers of the government who are ascertained to be in default to the government, where the time for accounting has actually passed, but not otherwise.—(4: 33.)

33. By the 25th section of the act of August 26, 1842, no allowance can be made for any commission or inquiry, except military or naval, until special appropriations are made by Congress for the purpose.—(4: 106.)

34. Costs of suit for the recovery of debts and penalties due the Post Office Department, and arising under the laws for its government, are payable out of the funds of the department, and not out of the judiciary funds. Therefore, such accounts should be settled by the Auditor of the Treasury for the Post Office Department.—(4: 301.)

35. Pursers are liable upon their bonds for public stores committed to their charge, even though such stores are destroyed by inevitable accident.—(4: 355.)

36. The accounting officers cannot allow credits to pursers for public stores thus destroyed whilst in their possession, Congress only being competent to grant relief in such cases.—(*Ibid.*)

37. Where the same person is contractor for two articles under separate contracts, and fulfils one and fails in the other, and presents his account to the treasury for settlement, the accounting officer may set off, in the adjustment, such amount as may be due from him to the government upon his claim against it.—(4: 380.)

38. This may be done in all cases where the relation of debtor and creditor arises in the settlement of the accounts of the same individual, as the grounds of the credits and debts are not material.—(*Ibid.*)

39. As the act of 24th March, 1834, for the relief of Philip Hickey, requiring the Third Auditor to ascertain the value of the timber taken from his lands by the United States troops, and for which he claims damages, does not define what tract of land the timber was cut from, it is competent for the Auditor to refer to the report of the committee which accompanied the bill, and the documents, as *prima facie* evidence on this point; and if they fail to show the extent of the tract, he may resort to such other proof as shall be satisfactory.—(4: 479.)

40. Where a contractor for supplies for the navy, who was bound in separate contracts to furnish sugar and tea in stipulated quantities during a fiscal year, made default in respect to the sugar, but furnished the tea by causing it to be shipped to the naval storekeeper by

a house in New York, to whom the contractor endorsed over the bills for the same, and payment has been refused him on account of the contractor's defalcation on the contract for sugar; *held* that the sale of the tea was made to the contractor and not to the government, and that the amount due therefor may be withheld and set off as against the damages sustained by the government on account of the non-fulfilment of the other contract.—(4: 551.)

41. The Comptroller and Auditors of the Treasury, whose appointments were authorized by the 3d section of the act of 3d March, 1817, are officers in the Treasury Department previously established by law, and are embraced in the restrictions imposed upon certain public officers by the 8th section of the act of 1789.—(4: 555.)

42. The object of the law was to withdraw from the accounting officers every motive of private interest in the performance of their public duties.—(*Ibid.*)

43. The accounting officers of the treasury are not authorized to allow a claim for unliquidated damages, alleged to have been sustained by a contractor for emigrating Indians, in consequence of the interference of and performance by the officers of the government of a part of the services.—(4: 626.)

44. If the contractors in this case have any equitable claim upon the government for damages, they can be awarded only pursuant to a future act of Congress.—(*Ibid.*)

45. Although the acts prescribing the duties of Attorneys General do not declare the effect of their advice, it has been the practice of the departments to heed it. It has been found greatly advantageous, if not absolutely necessary, to have uniformity of action upon analogous questions and cases; and that result is more likely to be attained under the guidance of a single department constituted for the purpose, than by a disregard of its opinions and advice.—(5: 97.)

46. Acts of Congress granting relief in special cases, and referring claims to the Second Auditor, confer upon him a jurisdiction exclusive of any other department; and where one Auditor settles such accounts, his successors are bound by his decisions.—(*Ibid.*)

47. Where the Secretary of War has decided that certain officers have a command according to their brevet rank, it is the duty of the accounting officers of the treasury to respect his decision.—(5: 386.)

48. The existence of a command, according to brevet rank, is to be presumed for the decision or order of the Secretary of War respecting them, and to be regarded by the Auditor and Comptroller as established by and according to his decision and orders.—(*Ibid.*)

49. Acts done within the peculiar and legitimate sphere of the Secretary's official duty are to be taken and understood as rightly done, and to preclude all collateral inquiry by accounting officers.—(*Ibid.*)

50. Where a receiver of public moneys, received from sales of public lands, made default after November, 1841, and it was made to appear that a former commission to that office expired on the 13th September, in that year, that the bond given for the performance of duties under the former commission was dated in March, and that given for performance of duties under the latter was dated in November, *held* that in stating the account, an amount of the public moneys, certified to have been in his hands in November, 1841, sufficient to pay for all the lands sold up to the 13th of September, 1841, should be credited to him in the discharge of the first bond, and the deficit found charged to the account of said receiver and his sureties in the second bond.—(5 : 396.)

51. The President of the United States has no jurisdiction to entertain appeals in matters of account, either on the application of the Commissioner of Customs, or of the Comptrollers, or of the Auditors, or of the individual claimants ; he is “to take care that the laws be faithfully executed,” not by his own personal examination of accounts, but by the agents and means provided for him by the Constitution and the laws.—(5: 630.)

52. The heads of departments have a rightful authority to direct allowances to be made, or to reject claims for allowances, in settling and adjusting accounts relating to the business of their respective departments ; and that such directions and rejections ought to be conformed to by the Auditors and Comptrollers, and Commissioner of Customs, respectively.—(*Ibid.*)

53. The Secretary of the Treasury is not bound to grant warrants for issuing money from the treasury, for whatever balances the Auditors and Comptrollers and Commissioner of Customs may state and certify ; but, as the head of the accounting officers of the Treasury Department, as the Secretary of the Treasury and the head of the department, he has the rightful authority to cause accounts to be reformed, readjusted and settled, according to his judgment of the right and justice of the case.—(*Ibid.*)

54. The duty to countersign warrants does not include the power to supervise, reverse, or frustrate the decision of the Secretary, nor authorize a refusal to countersign, because the Comptroller, or the Commissioner of Customs, differs in opinion from the Secretary as to the

sum proper to be allowed, or is of opinion that the warrant ought not to issue for any sum.—(*Ibid.*)

55. The United States is not responsible for, and cannot be charged with, money paid by a purser to his successor in office, which money did not belong to the government.—(6: 357.)

56. The clerk of the circuit court of the District of Columbia, who is also clerk of the criminal court of the district, is bound to account to the treasury for the fees which he receives in the latter capacity.—(6: 388.)

57. The clerks of the district courts of the United States in California are bound to render to the treasury an emolument account equally with clerks of other districts.—(6: 433.)

58. The Auditor of the Treasury for the Post Office Department has direct official relation to both the Treasury and Post Office Departments.—(7: 439.)

59. Where, by a private act, the Postmaster General is required to cause to be re-examined the transportation account of a mail contractor, it is to be intended that the same shall be done in the statute routine of the accounting of the department.—(*Ibid.*)

59. As a general rule, the United States do not pay interest on any debts of the government.—(7: 523.)

60. The only exceptions are where the government stipulates to pay interest, as in public loans, and where interest is given by act of Congress expressly, either by the name of interest or by that of damages.—(*Ibid.*)

61. Acts of Congress, authorizing the settlement of claims according to "equity," or "equity and justice," do not give interest; for, as between private individuals, there is no material difference in this respect between equity and law, and that expression does not change the result as regards the government.—(*Ibid.*)

II. SETTLEMENT OF ACCOUNTS.

1. The accounting officers may adopt the report of a committee of Congress, upon which a given law was reported and passed, for the principles which are to govern in the settlement of accounts under the law. The passage of a bill accompanying a written report may be considered the adoption of that report.—(1: 596.)

2. The accounts of the Vice President should be settled on principles of equity and good conscience, subject to the revision and final decision of the President.—(*Ibid.*)

3. The laws regulating the settlement of the public accounts, under which the Treasury Department is organized, require the Auditors to receive and examine accounts, and to certify them to the Comptrollers, who also examine and pass upon them, and certify the balances thereon to the Register, and give no power of appeal to the President, except in particular instances, like that of the accounts of Daniel D. Tompkins, where the power of revision and final decision by the President was expressly conferred by the act.—(1 : 624.)

4. The accounts of army contractors should be settled by the accounting officers. If they have any doubts on questions of law, arising in the course of the settlement, they will state them to the head of the department, who, if he please, may call for the opinion of the Attorney General.—(1 : 678.)

5. The interference of the President in any form with the settlement would be illegal. He has no official connexion with the settlement of such accounts ; and so far from being called upon to interpose any directions to the accounting officers, it would be an unauthorized assumption of authority for him to interfere at all.—(*Ibid.*)

6. The law of offset is limited to mutual debts between the same parties. If it be departed from at the treasury, there will be no other definite rules for the regulation of its practice.—(1 : 700.)

7. The accounting officers cannot setoff against A's trustees a debt owing by A to the assignees of B, who was a debtor to the United States.—(*Ibid.*)

8. It is not incumbent on the Second Comptroller to pass the amount of the claim of a purser to his credit, unless the same has been settled by the Fourth Auditor, and the balance certified by that officer for his decision.—(2 : 352.)

9. The Second Comptroller of the Treasury is authorized by law, in every case where, in his opinion, further delays will be injurious to the United States, to direct the Auditors, whose duties are to pass upon accounts confided to his revision, to audit and report the same to him, that he may revise and finally decide thereon.—(2: 625.)

10. The accounting officers may make rests and settlements in accounts which are not final settlements, and which may be reviewed and corrected whenever errors or false items are found therein ; not, however, by reopening or restating previous adjustments, but by making such new entries as shall produce the proper correction.—(*Ibid.*)

11. And even after accounts are finally closed, so far as the Auditors are concerned, there may be cases in which the Comptroller or head of the department may be authorized to interfere, for the purpose of

correcting errors or frauds which may have been discovered after the action of the Auditor. And still further, although the matter may have passed beyond the reach of all the executive officers, the government may yet be entitled to surcharge and falsify, by an appeal to the appropriate remedies furnished by the judicial tribunals.—(*Ibid.*)

12. But accounts of claimants presented for settlement in the *ordinary* course and under the *general* laws, and long since examined and finally settled, cannot be reopened and further evidence received in respect to them.—(*Ibid.*)

13. Where accounts are presented for settlement under special acts of Congress, the powers and duties of the accounting officers must principally depend on the terms of the acts themselves, and be varied according to the variations of the special acts from the general law.—(*Ibid.*)

14. The first section of the act for the relief of Colonel Carter assumes that the item of \$1,860 has been paid, and provides for the immediate payment of a gross sum in addition to the amount before received, without authorizing the accounting officers to open the former account or to readjust it. It is, therefore, a provision by itself, and should be so considered in reference to other matters provided for in said act.—(2: 639.)

15. The second section provides for the settlement of various other accounts, *i. e.*, those accounts only which, on the 2d March, 1833, were unadjusted and unsettled between him and the government.—(*Ibid.*)

16. In settling these accounts, the accounting officers may proceed and settle any one or more of the separate accounts referred to in the papers, for the claimant is entitled to such a settlement.—(*Ibid.*)

17. How far it may be proper to make partial settlements of either of the separate accounts is a question of convenience and discretion; but it occurs to the Attorney General that what may be required by justice and equity, in respect to the accounts under each contract, cannot very well be ascertained without a view of all the claims which it is intended to present under it.—(*Ibid.*)

18. But in adjusting the unsettled claims and accounts presented under the act in question, the accounting officers have no authority to reopen the former settlements, nor to require the production of evidence to establish their correctness, nor to set off errors prejudicial to the government, which may be detected therein against the allowances to which Colonel Carter may now show himself to be entitled in the unsettled accounts.—(*Ibid.*)

19. On a reconsideration of the opinion given in Carter's case, (ante 14,) *held* that the accounting officers may continue the former accounts by charging to the debit of Carter all such sums as they may find to have been erroneously credited to him in either of the former accounts, and all items of this nature will pass to his debit in the general account between him and the government.—(2: 650.)

20. The several sums which may be allowed under the act for his relief should be credited in the above mentioned general account, and the balance, either for or against him, should be certified in the usual manner.—(*Ibid.*)

21. Where a disbursing agent of the government is in apparent default in respect to the moneys entrusted to him, and there be sufficient due him from the government to make good the deficiency, it is proper thus to satisfy the claim for such dues.—(4: 316.)

22. If there be due him any sum over and above that which is necessary to make good such deficiency, it ought not to be retained, but should be paid to him, or, as in this case, to his lawful assignee.—(*Ibid.*)

23. The accounting officers have no authority to adjust the claims of contractors with the government for damages, without the special authority of Congress.—(4: 327.)

24. Disbursing officers of the government, in accepting their offices, assume the risk and trouble of exchanges and transportation of funds, and cannot charge for insurance, but only for the actual expenses of transportation.—(5: 103.)

25. If they insure the amount received upon a draft, to cover their liability to the government, it is for their own indemnity, for if it be lost by force, theft, hazard of the elements, or any other cause, they are responsible. The transportation is never at the will of the government, but always at that of the officer.—(*Ibid.*)

26. Antecedent authority to insure cannot charge the department for a loss.—(*Ibid.*)

27. In case a contract for services be rescinded by the United States, without malfeasance of the other party, and after the services have been partly performed by him, if he claim unliquidated damages as for breach of contract, the case is beyond the powers of the accounting officers of the treasury; but if he waive all other claims, and elect to take payment as for part performance in discharge of the contract, it is a mere question of account to be passed by the proper Auditor and Comptroller.—(6: 496.)

28. When the accounting officers of the treasury, in settling the

accounts of a disbursing officer of the United States, have allowed an alleged payment upon a genuine receipt of the party to which the money purports to have been paid, the latter cannot be suffered to claim the money of the government in his own name on the pretence that he gave the receipt without actually receiving the money; and if he be aggrieved, his remedy is against the disbursing agent of the government.—(7 : 40.)

29. A statute of private relief enacted that a certain account in the Post Office Department, which had been rejected by the Sixth Auditor and on which appeal had been taken to the First Comptroller, should be finally adjusted by the Second Comptroller and the Commissioner of Customs, and, in case of their disagreement, by the Attorney General.

Held, that the effect of this provision is to substitute another person or persons, *pro hac vice*, to perform one of the statute duties of the First Comptroller.—(7 : 724.)

30. This may be lawfully done, in so far as respects the Second Comptroller and the Commissioner of Customs, who will thus in effect control an auditing of the Sixth Auditor, and certify the same to the Postmaster General.—(*Ibid.*)

31. But the Attorney General cannot lawfully be required to act as the substitute of the First Comptroller; and so far as regards him, the only effect is to require him to advise the Second Comptroller and the Commissioner of Customs on matters of law arising in the case.—(*Ibid.*)

III—RE-EXAMINATION OF ACCOUNTS.

1. Accounting officers may re-examine any case where judgment has been rendered by a court and jury before the passage of the act of 1st March, 1823, if the defendant against whom the judgment has been rendered has any solid ground on which to ask a court of law for a new trial.—(1 : 598.)

2. Where it shall appear to an accounting officer that there is newly discovered legal evidence of which the defendant was wholly and innocently ignorant at the time of the trial, and which if he had had the benefit of it would have produced a different result, he may open the matter and give the party the benefit of it.—(*Ibid.*)

3. But accounting officers are to re-examine and admit no claims under said act where suits have been commenced, unless where new evidence is adduced other than that of the party interested.—(*Ibid.*)

4. After accounts are finally closed, so far as the Auditors are con-

cerned, there may be cases in which the Comptroller or head of the department may be authorized to interfere for the purpose of correcting errors or frauds which may have been discovered after the action of the Auditor. And still further, although the matter may have passed beyond the reach of all the executive officers, the government may yet be entitled to surcharge and falsify, by an appeal to the appropriate remedies furnished by the judicial tribunals.—(2 : 625.)

5. It is inexpedient for accounting officers in any case, unless thereunto specially directed by act of Congress, to rejudicate upon the items of an account once considered and settled in their offices.—(3, 461.)

6. If the practice be allowed, the experiment will be made upon every change of accounting officers, by persevering claimants who may imagine themselves entitled to more than they have been allowed, to procure a reconsideration and revision of former decisions; and the same would be likely to result disadvantageously to the government.—(*Ibid.*)

7. Although it is doubted whether an account which has been finally adjusted, settled, and closed, ought to be re-opened, the claim in behalf of William Otis, late collector of customs at Barnstable, not having been fully settled, may now be settled without violating such a rule.—(3 : 521.)

8. The accounting officers have authority to reconsider a matter that had passed from the executive department to the legislative, under and pursuant to the act of 3d March, 1841, chap. 18, sec. 2.—(3 : 731.)

9. In the case presented by the executor of William Otis, some time collector at Barnstable, under an act of Congress directing the accounting officers to settle with said Otis, and satisfy such amount of principle and interest as might be found due to him, the allowance of interest is proper.—(4 : 79.)

10. If the account has once been adjusted by the Comptroller without allowing interest, under the erroneous idea that interest was not allowable, the settlement may be opened and the account be correctly stated and settled. The case is distinguishable from ordinary accounts.—(*Ibid.*)

11. When accounts settled at the treasury are for any lawful cause reopened at the request of a claimant, and to correct errors in his behalf, they are to be considered open for errors in behalf of the government.—(6 : 576.)

IV.—WHEN FINALLY CLOSED.

1. The settlement of an account by the proper accounting officers is final and conclusive, so far as concerns the executive department of the government. If the individual whose account has been settled conceives himself injured by such settlement, his recourse must be to the judiciary or to Congress.—(1: 624.)

2. Where the Third Auditor shall have examined and certified, and transmitted, with vouchers, an account to the Second Comptroller, and the latter officer shall have certified the amount due to the Secretary of War, the matter is final so far as the accounting officers of the government are concerned, and can only be set aside by the Secretary, acting under the direction of the President.—(2: 302.)

3. A decision by the Second Comptroller upon a claim properly before him cannot be questioned by any other of the accounting officers. A demand after passing him ceases to be a matter of account, and becomes a liquidated and adjusted demand.—(*Ibid.*)

4. Where the account of General Taylor had been settled by the accounting officers and a balance found against him, for which a suit had been commenced, and a memorial was subsequently presented by him to the President, requesting the discontinuance of the suit on account of alleged errors in the settlement; *held*, that the decision of the Comptroller was conclusive upon the executive branch of the government, and that the President does not possess the power to enter into the correctness of the account for the purpose of repairing any errors which the accounting officers may have committed.—(2: 507.)

5. Items of account had once been presented to the accounting officers and rejected, and afterwards to Congress and rejected by that body in part, and the rejected items were again presented to the accounting officers on new proof; *held* that they cannot reopen the account nor take any new testimony in respect to those items.—(2: 515.)

6. Where Congress directs an account to be opened for a specific purpose, that purpose only can be subserved by so doing.—(*Ibid.*)

7. An appeal does not lie to the President from the determination of accounting officers, acting in the sphere of their duties; nor can the President interfere with their decisions.—(2: 544.)

8. Accounts once closed and settled, under circumstances communicated to the Attorney General, cannot be opened, except on the principles governing courts of equity in opening decrees.—(3: 148.)

9. By the 4th section of the act of 3d March, 1845, no accounts ad-

justed by the accounting officers of the treasury can be reopened without authority of law, except in cases where special acts have been passed for the relief of individuals.—(4: 378.)

10. The decision of the head of a department, directing payment of a particular claim, is binding upon all the subordinate officers by whom the same is to be audited and passed.—(5: 87.)

11. This doctrine has been recognized from the organization of the government, is necessary to its proper operations, and is warranted by law.—(*Ibid.*)*

(See *Claims, Contracts, Damages, Interest.*)

* For leading decisions of the Supreme Court on accounts and treasury transcripts, see *Walton vs. United States*, 9 Wheaton, 651; *United States vs. Bufford*, 3 Peters, 12; *Smith vs. United States*, 5 Peters, 292; *United States vs. Jones*, 8 Peters, 375; *United States vs. Robeson*, 9 Peters, 319; *Hoyt vs. United States*, 10 Howard, 109; *United States vs. Hodge*, 13 Howard, 478; *United States vs. Wilkins*, 6 Wheaton, 135.

ACTION.

I.—GENERALLY.

1. The term “prosecutions,” employed in the sixth article of the treaty with Great Britain, imports a suit against another in a criminal cause; such prosecutions being conducted in the name of the public, and under the control of the government.—(1: 50.)

2. The late collector at Savannah being indebted to the government, an action at law should be brought against him for the apparent balance due.—(1: 639.)

3. Soldiers in the military service of the United States may bring actions, to recover damages, in State courts for assaults and batteries committed on them by non-commissioned officers within the limits of a fort.—(3: 498.)

4. No preliminary demand of payment is necessary to put in default a postmaster who omits to pay over the public funds in his hands at the expiration of each successive quarter of his service, and no proof of such demand having been made is requisite to the sustaining of an action against him.—(4: 304.)

5. During the war between the United States and the Mexican republic, while General Taylor occupied the line of the Rio Grande, one Lund undertook to set up ferry across the river, in which he was interrupted by Major Ogden, of the United States, in obedience to the command of General Taylor; *held*, that no action lay against Major Ogden for this act; *held*, also, that on a suit brought by Lund against him in the State of Texas, he not residing there, and having never held a domicile there, and no personal service in Texas having been made on him, and he not having property in the State; so also no valid judgment can be rendered, at least none which can be made effective out of the State of Texas.—(6: 75.)

6. Where an officer of the army or navy is sued on account of acts alleged to have been performed in the line of his duty, the Executive is to judge, in his discretion, whether the case is one of which the defence is to be assumed by the government.—(*Ibid.*)

7. In general it is not the duty of the United States to assume the legal defence by counsel of marshals and other ministerial officers of the law, where these are sued for official acts.

But the President of the United States, in the discharge of his con-

stitutional duty to take care that the laws be faithfully executed, may, in his discretion, well assume, in certain cases, the defence of such ministerial officers.—(6 : 220.)

8. The right to do this cannot be limited to cases in which the *property* of the United States is concerned, but extends to other cases, more especially those affecting the constitutional security of the government, whether in the relation of the United States to foreign governments or that of the States among themselves, or that of the States to the United States.—(*Ibid.*)

9. In case of vexatious suits against marshals of the United States for lawful acts done by them in the extradition of fugitives from service, the President may authorize the employment of counsel in their behalf by the United States.—(6 : 500.)

10. No remedy exists for the case of a civilian absconding with maps and collections which came into his possession in the State of Massachusetts, but which belong to the government, except by ordinary action at law.—(7 : 9.)

11. Public buildings are not legally in the possession of the head of department, military or naval commandant, or other public officer on duty therein, but in the possession of the United States.

Hence, an ejectment brought against such officer, under pretence of his being tenant in possession, is without jurisdiction in law, as a means of trying the title of the United States.—(7 : 44.)

12. The United States having assumed the defence of such a suit, the public officer is to be considered as a nominal party, and the suit is subject to the control of the government.—(*Ibid.*)

13. Generally actions in behalf of the government are brought in the name of the United States, not of any public officer.—(7 : 50.)

14. The form of procedure in the district courts of the United States is that of the respective States, subject to discretionary change on the part of the courts of the United States.—(*Ibid.*)

15. Masters of American vessels are subject to prosecution in the name of the consul for omission to deposit with him the papers according to law, but not to indictment.—(7 : 395.)

16. No right of action accruing to the United States is barred by lapse of time, unless where there may be special provision by act of Congress to that effect.—(7 : 614.)

17. No indictment lies against a master of a ship for discharging irregularly in a foreign port a seaman shipped irregularly in the United States.—(7 : 730.)

18. But a *qui tam* suit lies for the irregular shipment.—(*Ibid.*)

ADVERTISEMENT.

1. *Semble.* If the provisions of law which require certain contracts to be advertised are disregarded, that the contracts, while they remain executory and without commencement of performance, are subject to be rescinded.—(6 : 406.)

(SEE CONTRACT. PRINTING.)

ALIEN.

1. The late governor of Guadaloupe, who had caused a vessel to be seized and condemned by authority assumed as such officer, being prosecuted in the court of Pennsylvania whilst here as a prisoner of war on parole, is not more exempt than any other foreigner (not a public minister) from suit and arrest.—(1 : 45.)

2. The government will not interfere with a private action against a foreigner for receiving a negro on board his ship. Such defendant is, as to his liability to suit, on a footing with every foreigner, not a public minister, who comes within the jurisdiction of our courts. If he has a defence under the treaty of peace, he must plead it in the usual course of judicial proceedings.—(1 : 49.)

3. A person acting under a commission from the sovereign of a foreign nation is not amenable for what he does in pursuance of his commission to the United States courts. But where there may be a legal trial the President will not interfere with the action against him.—(1 : 81.)

4. The courts of the United States in every State are at all times open to the subjects of a foreign power in friendly relations with them. More especially will such remedies be extended in a case of fraud.—(1 : 192.)

5. An alien can inherit, carry away, and alienate personal prop-

erty without being liable to any *jus detractus*, but not real estate.—(1: 275.)

6. It is the duty of the Executive, to whom the care of our foreign relations is committed, to take all lawful measures for the protection of alien subjects of a State with whom the United States are at peace, who shall have placed themselves under the safeguard of our laws.—(3: 253.)

7. But where aliens shall have suffered violence from citizens of the United States, they can be protected only by the redress to be afforded in the courts and the special interposition of the legislature.—(*Ibid.*)

8. The State courts only have jurisdiction of the criminal offence in such cases; the circuit court of the United States of civil actions where the offenders are citizens.—(*Ibid.*)

9. Until the passage of an act by Congress authorizing the enlistment of aliens into the military service of the United States, such enlistments must be regarded as invalid.—(3: 670.)

10. Aliens only, in the proper acceptation of the term, are excluded from the privileges of pre-emptioners.—(4: 147.)

11. An alien can be enlisted in the naval or marine corps service of the United States, and is bound the same as citizens to serve for the term of his enlistment.—(4: 350.)

12. An alien may hold, convey, and devise real estate in the District of Columbia.—(5: 621.)

13. Jaques Porlier, who settled in the Michigan Territory prior to the execution and ratification of Jay's treaty, is not a citizen of the United States.—(5: 716.)

14. Officers of the army, employed in recruiting, may lawfully enlist persons not naturalized as citizens of the United States.—(6: 474.)

15. Under the land laws of the United States aliens are entitled to purchase the public lands, subject only, as to their tenure, to such limitations as particular States may enact; with this exception, however, that pre-emptions are secured to aliens who have declared their intention to become naturalized according to law, and to citizens whether native-born or naturalized, and none others.—(7: 351.)

16. The same distinction is maintained in the graduation acts, with the further condition that the limited quantity of land purchaseable by any person at the reduced prices can be purchased only for personal use, and for actual settlement and cultivation.—(*Ibid.*)

ANNUITIES.

1. Investments in behalf of the Indians, provided by treaty to be placed in stocks of the United States bearing interest at five per cent., may, in the absence of any such stock, be invested in stocks bearing interest not less than five per cent., but only stocks of the United States.—(6 : 2.)

(See *Indians*.)

A P P E A L .

1. An appeal lies to the Supreme Court from the decree of a district judge, deciding that he has no jurisdiction over a particular subject.—(1 : 56.)

2. Where no questions of law have been made on the trial of a cause, and the whole matter has been submitted to a jury, the only redress that can be obtained is by a new trial.—(2 : 35.)

3. The grant or refusal of a new trial, being purely within the discretion of the court which tried the cause, is not the subject for revision in the Supreme Court.—(*Ibid.*)

4. An appeal from a decree of the United States court for the district of Louisiana, under the acts of May 26, 1824, and June 17, 1844, for the adjustment of private land claims in Louisiana, must be prosecuted within a year from the time the decree was rendered ; therefore, where a decree, confirming to C. and G. certain lands, was made, and an appeal was prayed, but not prosecuted within a year, as required, the decree has become final, and the parties are entitled to a patent for their land.—*U. S. vs. Curry et al.*—6 How. 106.—(5 : 475.)

5. Under the judiciary act of 1789, section 12, causes may be removed from State courts to the courts of the United States, where the matter in dispute exceeds five hundred dollars, and the suit is brought against an alien, or by a citizen of a State in which the suit is brought against the citizen of another State.—(5 : 504.)

6. If in the action, commenced in the State court of Virginia against the officer at Fort Monroe, the *ad damnum* be less than \$500, and the officer himself be a citizen of Virginia, where the plaintiff resides, then, inasmuch as great interests are depending, an amendment to the act of 1789 is recommended, so that a removal of the suit may be had to the United States court.—(*Ibid.*)

7. The appeal of Girard from the decree of the circuit court, affirming the condemnation of the "Good Friends" for an infraction of the laws of the United States during the late war with Great Britain, is not so general as to draw the forfeiture in question before the Supreme Court; but it works no forfeiture of the benefit of a remission.—(5: 714.)

8. An act of Congress allowed appeals in certain cases from the decision of the chief judge of the circuit court of the District of Columbia; and a subsequent act, without taking away that power, extended the right of appeal so as to lie to either of the assistant judges. Held that an order of the commissioner requiring, on account of the infirmity of the chief judge, that appeals be admitted only to the assistant judges, is contrary to law, and without effective operation.—(6: 38.)

9. Where a case, decided against the United States in the district court, is not appealed according to law, the decision of the district court is final in law.—(6: 634.)

10. The question of the expediency of continuing or dismissing an appeal in the Supreme Court, on a suit involving alleged trespass upon or title of the public lands, belongs to the competency of the Secretary of the Interior, not of the Attorney General.—(7: 550.)

11. There is no direct appeal from the Commissioner of Pensions to the Attorney General.—(7: 759.)

APPOINTMENT.

I. GENERALLY.

II. DURING A RECESS OF THE SENATE.

III. TENURE.

1.—GENERALLY.

1. The Senate cannot originate an appointment ; its constitutional action is confined to a simple affirmation or rejection of the President's nominations ; and such nominations fail whenever it disagrees with them.—(3: 188.)

2. The Senate may suggest conditions and limitations to the President, but cannot vary those submitted by him ; for no appointment can be made except on his nomination, or agreed to without qualification or alteration.—(*Ibid.*)

3. In the case of John R. Cox, jr., nominated for lieutenant in the navy from date, and confirmed, with the qualification that he shall take rank next after Lieutenant E. Peck, a commission cannot properly issue.—(*Ibid.*)

4. The President and Senate, by nomination and confirmation, may correct the date of military appointments, even after as great a lapse of time as has occurred in the case of Captain Twiggs.—(3: 307.)

5. Where one was a lieutenant in the navy prior to 1837, and afterwards resigned, but was again nominated to the Senate by President Jackson for the same office, from the 16th of February of that year, and confirmed by the Senate, with the condition that he should take rank next after Lieutenant Peck, and for whom a commission was made out at the Navy Department, but never signed by President Jackson ; and who was, thereupon, again nominated to the same office by President Van Buren, on the 7th of March, 1837, to take rank from the said 16th of February, 1837, but not confirmed ; and who was again nominated by President Tyler, on the 14th of December, 1841, "to be a lieutenant from the 28th April, 1826, to take rank next after Lieutenant Peck," but was rejected by the Senate ; *held*, that he was not a lieutenant within the Constitution and the laws.—(4: 217.)

6. Even after the confirmation by the Senate, the President may, in his discretion, withhold a commission from the applicant; and, until a commission to signify that the purpose of the President has not been changed, the appointment is not fully consummated.—(*Ibid.*)

7. The executive department being charged with the duty of seeing that the laws are faithfully executed, has authority to appoint commissioners and agents to make investigations required by acts or resolutions of Congress; but it cannot pay them, except from an appropriation for that purpose.—(4: 248.)

8. Since the passage of the act of the 4th August, 1842, the President has no power to appoint a midshipman until the number in the service shall be reduced to the number that were in service on the 1st of January, 1841.—(4: 306.)

9. An officer out of the navy cannot be brought again into it except by appointment.—(*Ibid.*)

10. There is no authority for the appointment of an architect and superintendent for the building of the wings of the Patent Office, directed to be constructed by the civil and diplomatic appropriation bill for the year 1849, conferred either by that or any other existing law; and the appointment of such an officer by the Secretary of the Interior should be revoked.—(5: 88.)

11. Where the office of architect of the public buildings was offered to the acceptance of an individual at a specified salary, and the offer was accepted, such offer and acceptance became a contract with the individual during the continuance of the work.—(5: 754.)

12. The provisions of the acts of 3d March, 1839, 23d August, 1842, and 30th September, 1850, do not prohibit a person from holding two compatible offices at the same time. They were intended to prevent arbitrary extra allowances in each particular case; but do not apply to distinct employments with salaries affixed to each by law, or by regulations.—(5: 765.)

13. Appointments provided for by act of Congress merely in general terms, must be made by the President by and with the advice and consent of the Senate.—(6: 1.)

14. A provision of statute in terms authorizes the appointment, with consent of the Senate, of three "Principal Clerks" of specific designation of positions: Held, that this provision was not repealed by a subsequent act for dividing clerks of the several departments into classes upon examination.—(6: 42.)

15. A territorial court cannot appoint an attorney for the Territory, but may designate a person to perform in court any duty of such at-

torney in his absence, which person will have a right to compensation from the United States.—(6: 80.)

16. The commander of a squadron of the navy on a foreign station has power to appoint a provisional or acting purser in the absence of any purser of the navy duly appointed by the President.—(6: 357.)

17. Although such appointment be subsequently disapproved by the Secretary of the Navy, still the acts which the acting purser may have performed while so acting are not thereby invalidated.—(*Ibid.*)

18. Under the acts of February 11, 1847, and July 19, 1848, no promotion in the Quartermaster's Department can be made from the grade of assistant quartermaster to that of quartermaster until the number of officers in the latter shall be reduced by vacancies occurring, so that the sum total of the grade shall not exceed the statute standard of the peace establishment of the United States.—(7: 108.)

19. The expression "ambassadors and other public ministers," which occurs three times in the Constitution, must be understood as comprehending all officers having diplomatic functions, whatever their title or designation.—(7: 186.)

20. Hence, the President has power by the Constitution to appoint diplomatic agents of the United States of any rank, at any place, and at any time, in his discretion, subject always to the constitutional conditions of relation to the Senate.—(*Ibid.*)

21. The power to make such appointments is not derived from, and cannot be limited by, any act of Congress, except in so far as appropriations of money are necessary to provide means for defraying the expense of this as of any other business of the government.—(*Ibid.*)

22. During the entire administrations of Washington, John Adams, Jefferson, and the first term of that of Madison, no mention occurs in any appropriation act of ministers of a specified rank at this or that place; but, sometimes by special act, and sometimes in the general appropriation acts, the provision for the diplomatic corps consisted of so much money "for the expenses of foreign intercourse," to be expended in the discretion of the President; and although, since that time, the practice has been to provide for certain ministers at certain places, yet that mode of legislation does not in terms, and could not in law, either extend or restrict the constitutional authority of the President, by and with the advice and consent of the Senate, to negotiate treaties and make diplomatic appointments, according to his and their judgment of the public interests of the Union.—(*Ibid.*)

23. Commencing with the administration of our foreign affairs by

Mr. Jefferson under President Washington, and so continuing under every successive President down to the present time, it has been the uniform practice of the government to regard the titular designations and the appointments of all diplomatic ministers as the exclusive and proper constitutional function of the conjoint Executive Department, that is, the President and the Senate.—(*Ibid.*)

24. "Ambassadors," by the public law of Europe, enjoy the highest privileges, because of the pretended or putative direct relation of the ministers of this name to their sovereign; but the imperial or regal sovereignty of a European monarchy neither has nor can have any public right in this respect, which does not equally belong to the popular sovereignty of a republic like the United States.—(*Ibid.*)

25. The President has constitutional power to appoint, by temporary commission, a diplomatic officer to meet any public exigency arising in the recess of the Senate.—(*Ibid.*)

26. The President has constitutional power, in the recess of the Senate, to change the designation of any mission, either by substituting a higher for a lower rank, or a lower for a higher, independently of any authorizing act of Congress.—(*Ibid.*)

27. Congress cannot by law require that the President shall make removals or reappointments, or new appointments of public ministers on a given day; nor that he shall at all times appoint and maintain a minister of a prescribed rank at a particular court; because, while the House of Representatives has control of the tax power, and of appropriations, yet the Constitution has intrusted the whole negotiating power to the President in behalf of the aggregate Union, and to the Senate composed of the legislative and executive ministers of the separate sovereignty and rights of each of the States of the Union.—(*Ibid.*)

28. When the act of the last Congress to remodel the diplomatic system of the United States, declares that from and after the end of the present fiscal year the President *shall* appoint envoys extraordinary, with secretaries of legation, at every place except one, in Europe, Asia, or America, where the United States now have any diplomatic agent, whether envoy, minister resident, chargé d'affaires, or commissioner, and proceeds to define the salaries of such envoys and secretaries, it could not constitutionally mean, and therefore is not to be construed as meaning to *require* the President to make any such appointments, but only to determine what shall be the salaries of such officers, in case they have been, or shall be, lawfully appointed at any time by the President.—(*Ibid.*)

29. The phrase "from and after" a certain day, employed in the

act, does not determine what its legal effect shall be, but only the time when that legal effect, whatever it is, shall commence.—(*Ibid.*)

30. The auxiliary verb “shall” in the act, wherever it occurs in reference to appointments, is only a word of time as to incidents, and never of command as to the main fact.—(*Ibid.*)

31. The act has no general phrase of repeal, and no effect of repeal by implication, and repeals nothing except such specific things as it repeals in express terms.—(*Ibid.*)

32. The President may, notwithstanding this act, continue to appoint or to retain public ministers of the rank of commissioner, minister resident, or chargé d'affaires, in his discretion, with concurrence of the Senate.—(*Ibid.*)

33. The existing laws, which prescribe a rate of salary for ministers resident and chargés d'affaires, are not affected by this act, and still continue in full force.—(*Ibid.*)

34. Envoys extraordinary and secretaries of legation in office will, on the day fixed, be entitled to the benefits, and subject to the deductions of the new provisions of this act regarding compensation, including salary, whether increased or not, and prohibition of outfit or infit, without reappointment by the President.—(*Ibid.*)

35. The President may appoint envoys at the places where the present minister is a minister resident, and in that case the new envoy will be entitled to the salary prescribed by the act.—(*Ibid.*)

36. The President may leave unchanged all the ministers resident; in which case they will each be entitled severally to the salary prescribed by the pre-existing acts of Congress.—(*Ibid.*)

37. The President may or not, in his discretion, appoint secretaries of legation at the places mentioned in the act.—(*Ibid.*)

38. If the legal effect of the act could be considered as the prospective creation of new offices, to begin to exist at a future day certain, then the President might appoint on that day as for a vacancy then existing in the recess of the Senate; but as the office of public minister is, in fact, a constitutional, not a statute one, he might appoint without the act, and in virtue of the Constitution.—(*Ibid.*)

39. The phrase in the act “shall, by and with the advice and consent of the Senate, appoint,” cannot take away any constitutional power of the President to appoint in the recess of the Senate, and has no effect save to negative the idea of its being intended to create any such “inferior officers,” the appointment of which may be vested by Congress in the President alone or in the heads of departments.—(*Ibid.*)

40. The whole effect of the act, as to appointments, is, by the provision for new salaries on a given day, to invite the President to make new appointments on that day, if he see fit ; but whether he shall make them or not is a question of his mere executive discretion under the Constitution.—*Ibid.*

41. The question of executive discretion in the case, being wholly independent of this act, is the permanent one, of wise and lawful discretion, having its measure in the exigencies of the public service and the letter and spirit of the Constitution.—(*Ibid.*)

42. The President may lawfully appoint new envoys and secretaries at all the places mentioned in the act ; the act affords the pecuniary means of doing this ; the President may well and should do this in any particular case where the public service seems to him to require it ; but for him to change the *personnel* or raise the rank of the entire diplomatic service of the United States in the recess of the Senate, and without the concurrence of that co-ordinate authority, would not be a just exercise of the presidential discretion, whether in its relation to the ministers themselves, to the public service, or to the spirit of the Constitution.—(*Ibid.*)

43. It belongs exclusively to the President of the United States, by and with the advice and consent of the Senate, to appoint consular officers to such places as he and they deem to be meet.—(7: 242.)

44. Consuls are officers created by the Constitution and the laws of nations, not by acts of Congress.—(*Ibid.*)

45. Congress may by law vest the appointment of inferior consular officers in the President alone or in the Secretary of State.—(*Ibid.*)

46. When the act of the last Congress, remodelling the consular system, says that from and after the 30th of June next the President *shall* appoint consuls to certain places, it means that he *may* appoint them, if he see fit, with such reference to the advice and consent of the Senate as the Constitution prescribes.—(*Ibid.*)

47. The act does not require him to appoint new consuls, or to re-appoint the present incumbents, at the places mentioned, nor to remove consuls now existing at places not named in the act, nor to omit to appoint new ones at other places not named in it.—(*Ibid.*)

48. The rates and the mode of compensation, by the act, take effect in regard to all consuls at the places named, and lawfully in office at the day fixed, whensoever they have been or shall be appointed.—(*Ibid.*)

49. All the provisions of the act regarding the duties of consular officers take effect on the 1st of July.—(*Ibid.*)

50. Nothing in the act forbids the continued appointment of vice consuls or consular agents, with approval of the Secretary of State.—(*Ibid.*)

51. The several consuls, for whom the act provides annual salaries, must collect and pay over all fees for consular service to the government.—(*Ibid.*)

52. The penalty of removal from office, which the act affixes to the non-performance of some duties by consuls, is inoperative, because removal from office cannot be enacted as a statute penalty, it being a matter for the constitutional discretion of the President.—(*Ibid.*)

53. Consuls not duly accounting for fees collected for consular service are subject to indictment for the statute crime of embezzlement, in the terms of the act of 1846, which regulates the collection, safe-keeping, and disbursement of public moneys.—(*Ibid.*)

54. Consuls, commercial agents, vice-consuls, and consular agents, for whom salaries are not provided by the act, are entitled to continue to receive fees for consular service.—(*Ibid.*)

55. The act does not repeal any fees except those which it expressly mentions, and leaves all others as they now stand by act of Congress or regulations of department.—(*Ibid.*)

56. The provisions of the act against the appointment of any citizen of the United States, not actually residing therein or abroad in the public service at the time, is directory only, not mandatory on the President.—(*Ibid.*)

57. In taking charge of the estates of citizens of the United States dying abroad, the power of consuls is limited to collecting the assets abroad, discharging them of local liabilities, reducing them to money, and transmitting to the treasury, subject to the orders, both before and afterwards, of the lawful executor or administrator.—(*Ibid.*)

58. In the case of appointments and removals by the President, when the removal is not by direct discharge or an express vacating of the office by way of independent fact, but merely by the operation of a new commission or appointment, then the virtue of the old commission ceases only when notice of the new commission is given to the outgoing officer, either by the President, or by the new officer exhibiting his commission to the old one, or by other sufficient notice; and the old officer continues to be entitled to compensation, down to the time of his ceasing to perform the duties of his office.—(7: 303.)

II.—DURING A RECESS OF THE SENATE.

1. A purser in the navy, appointed during a recess of the Senate, and his nomination sent to the Senate at the commencement of the next session thereof, having continued to hold his office under the appointment until the close of such session, was legally in office on the first day of January intervening, and is so to be regarded under the provisions of the act of the 4th of August, 1842. A nomination to supply any deficiency existing in point of numbers, as fixed by said act, may now be made in respect to that particular grade of officers.—(4: 321.)

2. The President cannot appoint district judges, attorneys, and marshals, during a recess of the Senate, for newly admitted States, where the offices were created and took effect during the session of that body.—(4: 361.)

3. If vacancies are known to exist during the session of the Senate, and nominations are not then made to fill them, they cannot be filled by the executive during the subsequent recess.—(*Ibid.*)

4. Nevertheless, the new States thus circumstanced are not left without their territorial judiciary; for it will not be presumed that Congress intended that the means of administering the law should be held in abeyance until other officers should be appointed.—(*Ibid.*)

5. Therefore, the district attorney may proceed with the business of the United States in the existing courts.—(*Ibid.*)

6. The President is authorized to fill up vacancies in the offices of the postmasters whose appointment was devolved upon him by the act of July 2, 1836, which happen to exist during a recess of the Senate.—(4: 523.)

7. Even though the vacancy occurred before the session of the Senate, if that body, during its session, neglected to confirm a nomination to fill it, the President may fill it by a temporary appointment, and public considerations seem to require him to do so.—(*Ibid.*)

8. The failure of a judge, appointed during the recess of the Senate, to proceed to the place of his appointment in this case, deemed a revocation of his acceptance.—(5: 738.)

III.—TENURE.

1. Where the tenure of an office is not defined, the commission may issue to hold during the pleasure of the President.—(1: 212.)

2. The commission of an officer appointed during a recess of the Senate, who is afterwards nominated and rejected, is not thereby determined, nor his sureties released from liability on account of any subsequent breach of his official bond.—(4: 30.)

3. In case of appointments and removals by the President, where the removal is not by direct discharge, or an express vacating of the office by an independent fact, but merely by the operation of a new commission or appointment, then the virtue of the old commission ceases only when notice of the new commission is given to the outgoing officer, either by the President, or by the new officer exhibiting his commission to the old, or by other sufficient notification.*—(6: 87.)

* Some point of time must be taken when the power of the executive over an officer, not removable at his will, must cease. That point of time must be when the constitutional power of appointment has been exercised. And the power has been exercised when the last act required from the person possessing the power has been performed. This last act is the signature of the commission.—*Marbury vs. Madison*, 1 Cranch, 137.

APPROPRIATIONS.

I. GENERALLY.

II. TRANSFER OF APPROPRIATIONS.

I.—GENERALLY.

1. Where an appropriation act for the expenses of preventing and suppressing Indian hostilities expressed a sum for the aggregate, less than the aggregate, in fact, of the several items therein enumerated; *held*, that the amount equal to all the items was appropriated, and that an erroneous addition of said items produced no effect upon the law.—(3: 419.)

2. The expenses incurred on account of the negroes taken out of the *Amistad* cannot be defrayed from the appropriation of March 3, 1819, in the act in addition to the acts to prohibit the slave trade.—(3: 510.)

3. The act of 1839 for the relief of the claimants, being for reimbursement of a sum of money advanced on account of the United States, comes within the equity of the exception in the sixteenth section of the act of 1795—"reimbursement, according to contract, of any loan made on account of the United States."—(4: 148.)

4. But if the practice of the department respecting the disposition to be made, after two years, of appropriations be settled, such practice should be pursued.—(*Ibid.*)

5. The appropriation for repairs, improvements, and new machinery at Harper's Ferry armory, passed September 8, 1846, cannot, nor can any portion of it, be applied to the purchase of the lands described in the estimate made at the ordnance office.—(4: 533.)

6. Although a portion of the appropriation was asked for with a view to the purchase of lands, Congress saw fit to specify the purposes for which it granted it, among which the purchase of lands is not included.—(*Ibid.*)

7. The contract for embankment in the navy-yard at Memphis is not within the true meaning of the proviso in the naval appropriation act of March 3, 1843.—(5: 89.)

8. Where an appropriation was made by Congress expressly for

opening or improving a maritime channel by a particular method mentioned; *held*, that the specification is not to be so construed as to defeat or control the general object.—(6: 19.)

9. In the absence of any specific appropriations for the object, the expense of transporting prisoners held for trial by the authorities of the United States in China are a lawful charge on the general appropriations for defraying the judicial expenses of the government.—(6: 59.)

10. Under the acts of March 3, 1795, May 1, 1820, and August 31, 1852, in general, a balance of appropriation remaining unexpended at the expiration of two years is carried to the “surplus fund,” and can be withdrawn therefrom only by new appropriation—except in the case of appropriations for objects to which a duration longer than two years is assigned by law; as to which, and especially expenditures in the War and Navy Departments, the specific appropriations remain in charge of the latter, until, on report therefrom of the object being consummated, the money is credited to the “surplus fund” at the Treasury Department.—(7: 1.)

11. In general, an appropriation or a balance thereof, made in any year for any continuous contract or other service of the government, may be applied to the same service during the succeeding or any subsequent year, and does not lapse into the “surplus fund” until the particular object be consummated.—(*Ibid.*)

12. Conversely, whenever, in any given year, the appropriation for a particular service proves deficient, a balance, remaining of the appropriation for the same service in a previous year, may be drawn upon to supply the deficit; or rather the balance of the preceding year commences the service of the new year, and is expended before any question arises of the new appropriation; and thus, at the end of each year, the true unexpended balance is only what remains unexpended of that single year’s appropriation.—(*Ibid.*)

13. Where a contract, or other claim on the government, is a continuous one, and still current, then the balance remaining of the appropriation made in one year for such service laps over into the following year, and is continuously applicable to the same object.—(7: 14.)

14. Such is the legal effect, even though the appropriation be but annual in its terms.—(*Ibid.*)

15. It is proper, in such a case, to begin, in each successive year, by expending the balance of the previous year, before entering upon the appropriation for the current year.—(*Ibid.*)

II. TRANSFER OF APPROPRIATIONS.

1. Moneys appropriated to the service of the War Department, and remaining unexpended in the treasury, may be carried to the surplus fund, without a report from the Secretary of War, after the expiration of two years from the calendar year in which they were appropriated.—(2: 442.)

2. Moneys appropriated to the service of the War Department, and remaining unexpended in the treasury, may be carried to the surplus fund within two years from the calendar year in which they were appropriated, upon receiving a report from the Secretary of War that the object for which the same were appropriated has been effected.—(*Ibid.*)

3. So, also, may a like transfer be made of moneys to be paid into the treasury, in the hands of the treasurer, as agent, whenever the Secretary of War shall report them; and of moneys once drawn from the treasury, but remaining unexpended, though repaid into the treasury after the appropriation shall have been carried to the surplus fund.—(*Ibid.*)

4. The law does not require a transfer of the unexpended balance of the appropriation made by Congress for carrying into effect the treaty of December 29, 1835, with the Cherokees; and, although two years have elapsed, Congress has shown no disposition to abandon the project of their removal, but, on the contrary, passed acts to promote the object.—(3: 415.)

5. Wherefore, it is competent for the War Department to make a requisition for such unexpended balance.—(*Ibid.*)

6. The President does not possess the power to order any portion of a specific appropriation for the mileage and pay of members of the House of Representatives to be transferred to the contingent fund of that body.—(3: 442.)

7. But he has power, under the act of July 2, 1836, to direct appropriations for one fortification to be transferred to another; the provision therefor being construed to be perpetual.—(4, 110.)

8. Since the passage of the act of 1842, the President has no power to direct transfers, in the Navy Department, of moneys appropriated to one particular branch, to the account of another branch of expenditure.—(4: 266.)

9. The limitation imposed by the last clause of the “act to authorize the President of the United States to direct transfers of appro-

priations for the naval service, under certain circumstances," does not fetter the authority to transfer from any general head of appropriation left unaffected by the previous clause.—(4: 310.)

10. It applies only to appropriations for specific and local objects, from which the act inhibits any diversion.—(*Ibid.*)

11. The President may, if he deems it conducive to the public interest, direct transfers of appropriations from the branch of expenditure of incidental expenses of the Quartermaster's Department to the other branches of barracks, quarters, &c., and of transportation of officers' baggage.—(4: 363.)

12. Congress having taken from the Executive Departments the power to transfer appropriations from one head of expenditure to another, the Secretary of the Navy cannot apply any portion of the money appropriated by the act of June 17, 1844, for books, maps, charts, and instruments, and for binding and repairing the same for the hydrographical office, to the building of a house for the superintendent.—(4: 428.)

13. The President is not authorized to direct a surplus of an appropriation for the Winnebago Indians to be transferred to meet expenses in the Department of the Interior for which the appropriation is inadequate, or for which none had been made.—(5: 90.)

14. Nor can the head of the department find sufficient authority in the act of August 26, 1842, to authorize him to make such a transfer.—(*Ibid.*)

15. The power given by that act is limited to transfers within the same bureau, and to appropriations for such objects as are enumerated in its 22d section.—(*Ibid.*)

16. The head of a department is authorized by the 23d section of the act of August 26, 1842, to transfer the surplus of an appropriation for one or more objects of expenditure to supply the deficiency of any other item of appropriation in the same department or office.—(5: 273.)

17. The 23d section of the said act is not a temporary but a permanent enactment, and limits transfers by the heads of departments to the surplus of appropriations, whilst the power conferred upon the President extends to entire appropriations.—(*Ibid.*)

18. So, also, said act authorizes the transfer and application of the surplus of appropriations, standing to the credit of the War Department, to supply the deficiency of appropriation for preventing and suppressing Indian hostilities.—(5: 274.)

19. The third section of the act of August 20, 1842, authorizes the transfer and application of the surplus of appropriations, standing to the credit of the War Department, and not transferred by the Secretary of the Treasury to the general account of moneys not appropriated, to supply the deficiency of the appropriation for preventing and suppressing Indian hostilities.—(5: 282.)

20. Such transfer will not conflict with the first article, eighth section, and twelfth paragraph, of the Constitution of the United States, nor with the sixteenth section of the act of March 3, 1795.—(*Ibid.*)

ARCHIVES.

1. The archives of any department are not in the possession of the head of department, chief of bureau, or clerk under either, for the time being, but in the possession of the United States.—(6: 7.)

2. Hence, a party cannot, by writ of replevin against such head of department or other public officer, take papers from the public archives on the allegation of their being his private property.—(*Ibid.*)

ARKANSAS.

1. The reference in the act for the establishment of the Territory of Arkansas to the act relating to Missouri includes the amendments to the latter act.—(5: 724.)

ARREST.

1. The arrest of a domestic servant of a public minister on civil process is illegal, and persons concerned in any such process are liable to fine and imprisonment.—(1 : 26.)

2. If, however, such domestic be an inhabitant of the United States, and shall have contracted debts prior to his entering into the service of the minister, which are still unpaid, he is not entitled to the privilege of exemption from arrest; nor shall any person be proceeded against for such arrest, unless the name of the domestic be registered in the Secretary of State's office, and transmitted to the marshal of the district in which Congress shall be held—(*Ibid.*)

3. The arrest is regulated by act of Congress, and the entering a public minister's house to serve an execution will either be absorbed in the arrest, as being necessarily associated with it, if that should be found criminal; or if the arrest be admissible, must be punished, if at all, under the law of nations.—(*Ibid.*)

4. Arrest for trial is a proceeding belonging to the judiciary, not to the executive branch of the government, and the warrant of arrest must be founded on information on oath.—(1 : 229.)

5. The President may issue his proclamation against an offender who has once been regularly arrested and made his escape; for, in such case, the regularity of the arrest implies that the probable cause has been furnished on oath according to the Constitution.—(*Ibid.*)

6. Every citizen of the United States is secured by the Constitution against an unreasonable arrest; and, to provide against the same, magistrates are forbidden to issue warrants except upon probable cause, supported by oath or affirmation.—(2 : 266.)

7. The communication of the British minister charging that a master of an American vessel had murdered a British subject on the high seas, together with copies of depositions taken before a justice of the peace of the island of Antigua, are not evidence sufficient to authorize the President to order the arrest of the accused and his confinement for trial.—(*Ibid.*)

8. Midshipmen are not exempt from arrest. Though they are officers and not commissioned, yet they are not "non-commissioned

officers'' within the usual and technical signification of that phrase ; nor are they "enlisted into the service;" and a proper construction of the act of 11th July, 1798, for the organization of the marine corps, fails to include them in the exemptions made.—(3 : 119.)

ASSETS.

(SEE EXECUTORS AND ADMINISTRATORS.)

ATTACHMENT.

(SEE PROCESS.)

ATTORNEY.

1. A power of attorney given to a cashier of a bank by name, or to his successors in office, authorizes the successors to act under it.—(5: 723.)

(See *Attorney General, District Attorney.*)

2. Sundry parties having conflicting claims against the government under a statute making provision to defray the expenses of removing the Choctaw Indians from the State of Mississippi, an arrangement between them was made to refer the matter to the arbitration of J. M. C. and P. R. F., with power of attorney to receive the money on their behalf, and receipt for the same to the United States: Held, that this is not a case of the transfer or assignment of a claim, or of agency thereof, forbidden by acts of Congress.—(6: 60.)

3. An ordinary letter from R. M. H. to J. H. E., authorizing the latter to transact certain business for the former, does not empower him to execute, in the name of the former, a power of attorney, assignment, or other instrument under seal.—(6: 79.)

4. A territorial court cannot appoint an attorney for the Territory, but may designate a person to perform in court any duty of such attorney in his absence, which person will have a right to compensation from the United States.—(6: 80.)

5. Counsel, specially employed by the Secretary of State to aid the district attorney in the prosecution of persons accused of being engaged in illegal military enterprises in Texas, should be paid out of the funds of the State Department.—(6: 355.)

6. The Secretary of State has no power to appoint a commission or board to determine how much money a foreign prince shall pay to counsel in the United States for professional services.—(6: 386.)

7. When a letter of attorney forms part of a contract, and is to secure the repayment of money lent, or has other valuable consideration, even if not made irrevocable in terms, it is to be deemed so in law.—(7: 35.)

ATTORNEY GENERAL.

1. The Attorney General cannot act as an arbitrator between the government and an individual.—(1: 209.)

2. He is not authorized to give an official opinion in any case except on the call of the President, or some one of the heads of departments.—(1: 211, 253, 492.)

3. Subordinate officers of the government who desire an official opinion of the Attorney General must seek it through the head of the department to which they are accountable.—(*Ibid.*)

4. It is not the duty of the Attorney General to investigate the truth of any allegation of a fraudulent collusion to obtain money from the treasury.—(1: 253.)

5. It is his duty to give opinions on questions of law; he has nothing to do with the settlement of controverted questions of fact.—(1: 347.)

6. It is not his duty to give an official opinion to the House of Representatives.—(1: 335.)

7. Nor to give an opinion concerning infringements of the rights of patentees by dealers in the patented articles of manufacture.—(1: 575.)

8. Nor to instruct district attorneys in the discharge of their duties; nor to draw pleas at the request of the heads of departments; nor to indicate the course to be pursued in particular suits depending in the district and circuit courts; nor to interfere at all with suits until they reach the Supreme Court.¹—(1: 609.)

9. Nor to give opinions on questions in which the United States have no interest.—(2: 311.)

10. Nor to express an opinion, prospectively, to Congress as to their power to review the sentence of a general court martial.—(2: 499.)

11. Nor to give opinions except in cases defined by law.—(2: 531.)

12. Nor to revise the decisions of the Executive Departments, deliberately made and entirely satisfactory to the Secretary thereof.—(3: 39.)

¹ By act of 29th May, 1830, the Attorney General is required to advise with and instruct the Solicitor of the Treasury as to the manner of conducting suits.

13. Nor to give opinions at the instance of parties where no further action is to be had in the premises.—(*Ibid.*)

14. Nor to decide questions of fact.—(3 : 309.)

15. Where a question has been deliberately settled by an Attorney General and acquiesced in by a department, under the eye of the government, during successive sessions of Congress, it does not seem proper to disturb such a decision unless a very strong and pressing case should be made for consideration.—(2 : 220.)

16. The Attorney General having no power to give an official opinion at the request of the head of a department, except on matters that concern the official powers and duties thereof, all opinions given by him in respect to claims under the Cherokee treaty have been extra-official and unauthorized.—(3 : 367.)

17. It is not within the province of the Attorney General to advise a committee of Congress as to the validity of a claim pending before that body.—(5 : 561.)

18. It is not the duty of the Attorney General to give opinions on questions of fact, nor to review the proceedings of a court-martial in search of questions of law.—(5 : 626.)

19. The Attorney General does not perceive that it is his official duty to conduct a suit in the Supreme Court brought by a private citizen against the Sergeant-at-arms of the House of Representatives.—(5 : 720.)

20. It is not the duty of the Attorney General to give advice to local officers of the government in the department of the Secretary of the Treasury.—(6 : 21.)

21. The Attorney General is by designation of person a member of the Smithsonian Institution ; but it is not his duty individually, and as Attorney General, to give advice to the Regents of that Institution.—(6 : 24.)

22. The Attorney General has no lawful right to give advice to individuals on matters affecting the government, or to entertain appeals from parties on questions of law decided by the departments ; but only to give advice on public matters when required by the President, or requested by any head of department, or by the Solicitor.—(6 : 147.)

23. Obstructions to navigation in the navigable waters of the United States, whether by States or by individuals, constitute acts of purpresure, and there is remedy in such case by *ex officio* information in the name of the Attorney General of the United States.—(6 : 172.)

24. In giving his advice and opinion in questions of law to the

President and heads of departments, the action of the Attorney General is quasi judicial. His opinions officially define the law, in a multitude of cases, where his decision is in practice final and conclusive—not only as respects the action of public officers in administrative matters, who are thus relieved from the responsibility which would otherwise attach to their acts—but also in questions of private right, inasmuch as parties, having concerns with the government, possess in general no means of bringing a controverted matter before the courts of law, and can obtain a purely legal decision of the controversy, as distinguished from an administrative one, only by reference to the Attorney General.—(6: 326.)

25. Accordingly, the opinions of successive Attorneys General, possessed of greater or less amount of legal acumen, acquirement, and experience, have come to constitute a body of legal precedents and exposition, having authority the same in kind, if not the same in degree, with decisions of the courts of justice.—(*Ibid.*)

26. It frequently happens that questions of great importance, submitted to him for determination, are elaborately argued by counsel; and whether it be so or not, he feels, in the performance of this part of his duty, that he is not a counsel giving advice to the government as his client, but a public officer, acting judicially, under all the solemn responsibilities of conscience and of legal obligation.—(*Ibid.*)

27. It is the regular statute duty of the Attorney General only to conduct in person the causes of the United States in the Supreme Court; but the President may undoubtedly, in the performance of his constitutional duty, instruct the Attorney General to give his direct personal attention to legal concerns of the United States elsewhere, when the interests of the government seem to the President to require this.—(*Ibid.*)

28. It is recommended that the settlement of accounts connected with the judiciary be transferred from the Interior Department to the Attorney General's office.—(*Ibid.*)

29. No appeal lies from the decision of the Commissioner of Pensions or other officer of the government to the Attorney General.—(6: 289.)

30. The Attorney General, in certifying the title of land purchased by the government, must look at the question as one of pure law, and cannot relax the rules of law on account either of the desirableness of the object or the smallness of the value of the land.—(6: 432.)

31. It is not the duty of the Attorney General to determine the

amount of compensation payable to counsel specially retained by the Secretary of State or other head of department.—(6 : 635.)

32. No patent can be issued by the Commissioner of Public Lands to any private land claimant in the State of California until after final decree in the case.—(7 : 491.)

33. Questions of fact arising on a survey in such a case are not for the determination of the Attorney General.—(*Ibid.*)

34. The question of the expediency of continuing or dismissing an appeal in the Supreme Court on a suit involving alleged trespass upon or title of the public lands, belongs to the competency of the Secretary of the Interior, not of the Attorney General.—(7 : 550.)

35. The relation of the Attorney General to any one of the departments in reference to lawsuits in the business of the latter, is that of counsel to client, determining matters of law, but leaving all considerations of mere administrative expediency to the proper department.—(7 : 576.)

36. The opinion of the Attorney General for the time being is in terms advisory to the Secretary who calls for it; but it is obligatory as the law of the case, unless, on appeal by such Secretary to the common superior of himself and the Attorney General, namely, the President of the United States, it be by the latter overruled.—(7 : 691.)

37. A statute of private relief enacted that a certain account in the Post Office Department, which had been rejected by the Sixth Auditor, and on which appeal had been taken to the First Comptroller, should be finally adjusted by the Second Comptroller and the Commissioner of Customs, and, in case of their disagreement, by the Attorney General.

Held, that the effect of this provision is to substitute another person or persons, *pro hac vice*, to perform one of the statute duties of the First Comptroller.—(7 : 724.)

38. This may be lawfully done, in so far as respects the Second Comptroller and the Commissioner of Customs, who will thus, in effect, control an auditing of the Sixth Auditor, and certify the same to the Postmaster General.—(*Ibid.*)

39. But that the Attorney General cannot lawfully be required to act as the substitute of the First Comptroller; and so far as regards him, the only effect is to require him to advise the Second Comptroller and the Commissioner of Customs on matters of law arising in the case.—(*Ibid.*)

A U D I T O R .

(SEE ACCOUNTS.)

A V E R A G E .

(SEE GENERAL AVERAGE.)

B A I L .

1. The question of bail is a judicial, not an executive one. The President cannot admit a prisoner to bail nor discharge him on his own recognizance.—(1 : 213.)

BANK.

-
- I. BANK OF THE UNITED STATES.
 II. OTHER BANKS.
-

I.—BANK OF THE UNITED STATES.

1. Under the 14th section of the act incorporating the Bank of the United States, the Treasury must receive its bills in payment of debts due to the United States.—(1: 268.)

2. A resignation of a director of the Bank of the United States is an inchoate act until the same has been accepted expressly or presumptively by the appointment of another.—(2: 406.)

3. The Secretary of War had authority to direct the president of the Bank of the United States to transfer the funds, books, and papers of the pension agency in possession of said bank to the president of the Girard Bank, and no valid reason has been assigned for disobeying the order.—(2: 593.)

4. The Bank of the United States and its branches performed only the subordinate duties of paymasters of pensions, and sustain the same relation to the Secretary of War which the ordinary paymasters of the army sustain to the same department. They cannot look beyond the orders of the department in order to question their validity, nor inquire into the manner in which its chief intends to dispose of the funds, &c., demanded of them. The order itself, in this case, is an ample voucher and indemnity to the agents complying with it.—(*Ibid.*)

5. This case is distinguishable from cases of payments in detail to those who claim to be the creditors of the government.—(*Ibid.*)

6. The directors of the Bank of the United States are not justifiable in withholding dividends on the stock of that institution owned by government, and to apply the same in satisfaction of a controverted claim against the latter for damages, costs, and interest upon a bill drawn on the government of France.—(2: 663.)

II.—OTHER BANKS.

1. The deposit banks are required to pay interest upon any sum which may remain in them to the credit of the Treasurer of the United States over and above three-fourths of their capital, respectively, for the period which may elapse before the Secretary of the Treasury shall find it expedient to transfer it to another bank, whether the same have been used or left unemployed.—(3 : 141.)

2. Deposit banks, from which a transfer is ordered, are liable for interest until the moneys transferred shall be actually placed to the credit of the Treasurer in those to which the transfers shall be made.—(*Ibid.*)

3. Money held by the agencies of deposit banks must be regarded, in respect to liability for interest, as well as in all other respects, precisely as if no agencies existed, and as if the money were held at its ordinary place of business and in the ordinary way. Interest should be charged upon the amount which may be held by both the bank and its agencies above one-fourth of the capital stock.—(*Ibid.*)

4. The expression “a whole quarter of a year,” means a whole fiscal quarter (in the act of 23d June, 1836) as known at the department from its organization.—(3 : 156.)

5. Banks employed as depositories before the passage of the act of 1836, which have had an amount exceeding one-fourth of their capital, during the whole of the fiscal quarter elapsed since the act, are chargeable with interest for the quarter, although their agreements were not executed until a part of the term had expired.—(*Ibid.*)

6. But in order to make them liable for the interest, the deposits must have exceeded one-quarter of the capital for the whole quarter.—(*Ibid.*)

7. All banks are disqualified to be selected as banks of deposit which shall have issued or paid out any note or bill of their own or other banks of a less denomination than five dollars.—(3 : 341.)

8. The act to regulate deposits of the public money authorizes the selection of banking corporations chartered by the acts of the legislatures of the different States, in those States only as depositories, plainly excepting private banking associations, and such as the North American Trust and Banking Company.—(3 : 385.)

9. The Bank of America having paid out bills of other banks of a denomination less than five dollars, has incapacitated itself from being a depository of the public money.—(3 : 411.)

BANKRUPT.

1. The payment of a debt to, and the discharge of the demand, by two of three assignees of a bankrupt's estate is not strictly a valid discharge.—(5 : 693.)

(See *Debtor*.)

BILLS OF EXCHANGE.

1. Bills of exchange may be endorsed by one having a power of attorney.—(1 : 188.)

2. Where an assistant quartermaster gave a draft on another assistant quartermaster to A, and A sold it to B, who surrendered it for an authority to draw on the maker for the amount, and afterwards drawing therefor by making a bill and selling it to C, who caused it to be presented to the drawer of the first draft, on whom process had been served as garnishee at the suit of A: *Held*, that the drawee should disregard such process, and that he pay the draft which he had authorized to be drawn upon him.—(3 : 605.)

3. When the United States, by their authorized officers, become a party to negotiable paper, they incur all the responsibilities of individuals who are parties to such instruments.¹—(4 : 90.)

4. The Patent Office made a deposit with S. W. C., bankers in Washington, subject to the draft of D. J. B., an agent of the office in London, upon the certificate of which B. B. C., bankers in London, advanced money to D. J. B., after which, and before repayment of the advances made by B. B. C., S. W. C. suspended payment: *Held*, that the Patent Office must indemnify B. B. C.—(7 : 64.)

5. The question whether the United States will pay according to their original tenor drafts drawn by the Mexican government under the Mesilla convention, or suspend the payment at the subsequent request of said government, is a matter of political, not of legal determination.—(7 : 599.)

¹ The United States vs. Bank of the Metropolis, 15 Peters, 377.

BOND.

-
- I. OFFICIAL BONDS.
II. OTHER BONDS.
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I.—OFFICIAL BONDS.

1. The bond of a purser is required to be approved by the judge or attorney for the United States of the district in which he shall reside; and to save the necessity of proof on this subject the residence should be expressed in the body of the instrument.—(2: 93.)

2. Bonds must be sealed; and for abundant caution they should be sealed with wax, or wafer and paper cap, which are everywhere acknowledged to be seals, although scrolls or any other sealing would be valid, which is a good sealing in the place where they are executed.—(*Ibid.*)

3. No attestation is necessary to their validity, although witnesses may be useful and convenient to make proof of handwriting in case of necessity.—(*Ibid.*)

4. The certificate of the district attorney approving the sureties is, to all substantial purposes, an approval of the bond.—(*Ibid.*)

5. The law recognizes but one christian name; hence the bond, with sureties and the oath of office of a receiver of public moneys, subscribed "Benjamin F. Edwards," where the commission had issued to "Benjamin Edwards," are valid.—(2: 332.)

6. The bond given by a navy agent under his first commission, which was issued during the recess of the Senate, ceases to have effect after the confirmation by the Senate.—(2: 333.)

7. The bonds of the deposit banks are analogous to the bonds given by public officers on their appointment, and should be retained in the public archives, unless Congress shall otherwise determine.—(3: 292.)

8. Deputy postmasters who shall be required to execute the functions of depositaries under the act of July 4, 1840, ought to give new bonds, with sureties, to be approved by the Solicitor of the Treasury.—(3: 574.)

9. Instructions respecting the form and penalty of the bonds should be given through the Post Office Department.—(*Ibid.*)

10. Collectors who are made depositaries of the public moneys under the act of 4th July, 1840, are required to execute a new bond, with sureties, conditioned for the performance of the new duties required by said act, as well as those before required.—(3: 584.)

11. Collectors are not required to give bonds in a larger amount than before, under the act of July 4, 1840, unless it shall be deemed necessary by the proper officers of the department; but they are required to give new bonds, with new conditions, embracing the new duties devolved upon them, as well as those previously required.—(3: 586.)

12. If the proper department shall deem it expedient, it may, in lieu of a new bond, (under the act of July 4, 1840,) embracing all the duties of the collector, take a new bond, in a suitable penalty, embracing the new duties only, leaving the old one outstanding.—(3: 600, 609.)

13. It is not material whether bonds taken under the provisions of the 37th section of the act of July 2, 1836, are accepted in the mode suggested by the Auditor in his communication of the 10th of May, or in that which, for greater convenience, has been adopted by the Postmaster General, no form being prescribed by the act.—(4: 187.)

14. For the security of the sureties bound in the previous obligation, the date of the acceptance should be endorsed on the bond; yet the parties to the new bond are bound by the acceptance, in fact, of their bond by the Postmaster General, and this acceptance may be shown as any other fact is required to be.—(*Ibid.*)¹

15. The validity of the bond of a receiver is not affected by his discharge as a bankrupt, nor are his sureties discharged or released thereby.—(4: 353.)

16. It is a sound regulation, conformable to law, for the Secretary of the Treasury not to give up to the collectors their original bonds on the execution of new ones.—(4: 312.)

17. Neither the act requiring bonds of collectors to be deposited in the office of the Comptroller, nor any other, authorizes a withdrawal of them, except for the purposes of suit.—(*Ibid.*)

18. Pursers are liable upon their bonds for public stores committed to their charge, even though such stores are destroyed by inevitable accident.—(4: 355.)

¹ Bank of United States vs. Dandridge, 12 Wheat., 64.

19. The assayer, chief coiner, and treasurer of the mint cannot execute their offices legally unless they have given bonds for the faithful performance of their duties.—(5 : 687.)

20. Pursers who have neglected to give bond on or before the 1st day of May, 1817, are out of office by the neglect.—(5 : 706.)

21. Where a commissary general of the army had omitted to sign his official bond, but had delivered it to the proper department signed only by the sureties, suggested that it be now signed by him, and attested specially in the form prescribed by the Attorney General.—(5 : 718.)

22. If the paymasters retained in the service under the act of the last session of Congress are charged with duties other and different from those before, they ought to give new official bonds.—(5 : 733.)

23. It is in the discretion of the President whether or not to require bonds of an officer of the Engineer Corps employed as disbursing agent of the government.—(6 : 24.)

II.—OTHER BONDS.

1. The bonds given for loans of money to provide for the inhabitants, and the suppression of Indian hostilities in the Territory of Florida, may be paid, under the joint resolution of 1845, from the appropriation of 1842.—(4 : 372.)

2. The amount that may be thus paid, however, under the authority of that resolution, cannot exceed the appropriation.—(*Ibid.*)

3. *Bona fide* holders of bonds for loans made to Florida for the suppression of Indian hostilities, which have not been paid by the authorities of Florida, or at the treasury, may be paid for the same, if the appropriations made by the acts of Congress of August 23, 1842, are sufficient.—(4 : 465.)

4. The payment made by the United States to the agent of the governor of Florida, which went to the bond-holders, may be taken into account in adjusting the balance due.—(*Ibid.*)

5. The United States are not liable for any losses on the public stock in which that payment was voluntarily invested by the agent who received it.—(*Ibid.*)

6. A clerical error in a contractor's bond should not operate to his prejudice.—(5 : 546.)

7. On the act of Congress, which directed the delivery, by the United States, of ten millions of dollars in stock to the State of Texas, provided that no more than five millions of said stock be issued until certain creditors of the State should have filed in the treasury releases

of all claims against the United States: *Held*, that the Secretary of the Treasury cannot make delivery of the reserved five millions by apportionment, but must withhold all payments until evidence be presented to him of the complete discharge of the United States in the premises.—(6: 130.)¹

¹ A bond, voluntarily given by a disbursing officer and his sureties to the United States, through the proper department, to secure the faithful performance of his duties, is a valid contract, though the taking of such a bond may not be prescribed by any act of Congress. (*United States vs. Tingey*, 5 Pet., 115.) See also, on the subject of bonds, *Postmaster General vs. Early*, 12 Wheat., 136; *United States vs. Bradley*, 10 Pet., 343; *Broome vs. United States*, 15 How., 143; *Farrar vs. United States*, 5 Pet., 373.

B R E V E T S .

1. Brevet rank takes effect whenever by special assignment the brevet officer is invested with a separate command, comprising troops of different corps at a particular post.—(1: 604.)

2. The act of July 6, 1812, authorizing the President to confer brevet rank on such officers of the army as shall have served ten years in any one grade, applies to brevet officers generally, and such as have been brevetted for gallant services.—(1: 653.)

3. The service actually rendered for ten years in any one grade being the ground of promotion, any officer performing it for that term, whether he holds the grade by commission or by brevet, is entitled to promotion.—(*Ibid.*)

4. The ten years' service in one grade, mentioned in the act of July 6, 1812, as given for one of the meritorious grounds for a brevet, (if there be no practice to the contrary,) must be a service for ten continuous years.—(2: 71.)

5. The act authorizing the President to confer brevets is not mandatory. It is not imperative; but merely authorizes him to confer brevet rank in certain cases; and the cases are within his sound discretion to say whether the gallant actions, meritorious conduct, and the service in one grade of ten years have been sufficiently important to deserve the mark of distinction.—(*Ibid.*)

6. The brevet commissions issued by the President on the 28th of June, 1848, to certain persons who had distinguished themselves in the late war with Mexico, on the recommendation of the commanding officer of their regiment, are valid, though such persons were not non-commissioned officers at that date.—(5: 22.)

7. The act of March 3, 1847, invested the President with authority to issue such brevets as a reward for the distinguished services of that class of officers, rendered in that capacity, upon certain evidence that they had thus served, whether they should retain the same rank when the reward should be bestowed, or should be transferred elsewhere to act in an humbler capacity.—(*Ibid.*)

8. Brevet officers of the marine corps are entitled to the same pay

and emoluments which are allowed to officers of similar grades in the infantry of the army.—(5: 513.)

(See *Compensation*.)

9. The date of the invalid pension of an officer of the army depends on the lineal, not the brevet, rank, of such officer.—(6: 88.)

10. Brevet Major General Smith, assigned to the command of the Eighth Military Department, was temporarily absent therefrom under orders from the General-in-chief, for the purpose of consultation upon matters connected with his command, during which time Brevet Brigadier General Harney was ordered to the temporary command of the same department: *Held*, that Brevet Major General Smith and Brevet Brigadier General Harney were each entitled, for the time, to the pay and emoluments according to their respective brevet ranks, each being in command and on duty in such rank.—(6: 211.)

BUILDINGS.

(SEE PUBLIC BUILDINGS.)

CADETS.

1. Cadets are soldiers, receiving the pay of sergeants, and bound to perform military duty in such places and on such service as the Commander-in-chief shall order ; and the corps to which they are attached is a part of the military peace establishment. As a part of the Corps of Engineers, they form a part of the land forces of the United States, and have been constitutionally subjected by Congress to the rules and articles of war, and to trials by court-martial.—(1 : 276.)

2. The cadets at West Point who have been or may be wounded whilst in the line of their duty, are entitled to be placed on the list of invalids, as provided in the acts of March 16, 1802, April 29, 1812, and March 3, 1815.—(1 : 348.)

3. The regulations of the Military Academy may be altered by the Secretary of War, with the approbation of the President.—(1 : 469.)

4. The professors and cadets at that Academy, as such, are not commissioned officers within the meaning of the 64th article of the rules and articles of war, for the purpose of being detailed as members of a general regimental court-martial ; nor can such court be formed of professors for the trial of cadets.—(*Ibid.*)

5. Cadets may be tried by a regimental or garrison court-martial, according to the 66th and 67th articles of the rules and articles of war.—(*Ibid.*)

6. Cadets are not commissioned officers within the meaning of the 64th article of the rules and articles of war, nor are brevetted graduates officers until an office becomes vacant which they can fill ; until which event they remain graduated cadets, privileged, by virtue of their degree and the recommendation of their academical staff, to become commissioned officers.—(2 : 251.)

7. Graduated cadets employed in the office of the assistant adjutant general are doing staff duties, and are entitled to the additional ration allowed by act of March 2, 1827, to the captains and subalterns of the army.—(2 : 318.)

8. The distinction contended for at the Military Academy between academic and military rank is not allowable in the choice of quarters.—(5 : 627.)

9. The cadets of the Military Academy at West Point appertain by

law to the Corps of Engineers, are therefore a part of the land force of the United States, and as such are subject to the rules and articles of war.—(7: 323.)

10. The under graduate cadets are not commissioned officers, and therefore are not competent to sit on a court-martial, and are triable by a regimental or garrison court-martial.—(*Ibid.*)

11. But they are not the “non-commissioned” officers of the acts of Congress and the General Regulations, which expression means “sergeants and corporals,” and is inapplicable to the cadets.—(*Ibid.*)

12. They are inchoate officers of the army, and subject by statute and regulation to no discipline incompatible with that character.—(*Ibid.*)

13. The under graduate cadets, in their internal academic organization as officers, non-commissioned officers, and privates, are not subject to the articles of war as respects their relation to one another, but only as respects their relation to commissioned officers of the army on duty as such in the Academy.—(*Ibid.*)

14. The graduated cadets, assigned to service as supernumerary officers, are brevet second lieutenants, and as such commissioned officers, and therefore subject to all the duties and entitled to exercise all the powers of that grade, including the legal capacity to sit on courts-martial as commissioned officers, and be tried only as such according to the articles of war.—(*Ibid.*)

CANAL.

1. The Chesapeake and Ohio Canal Company may commence the eastern section of the canal at any point on the tide-water of the Potomac within the District of Columbia which they may select.—(2: 166.)

2. The route of the canal through the city from that point, and the time within which the work shall be finished, rest entirely in the discretion of the company.—(*Ibid.*)

3. The proposed extension of the canal from Lake Erie to the Wabash, from the mouth of the Tippecanoe to Terre Haute, is authorized by the act of Congress; and when the same shall have been agreed on and located, the additional lands provided by the act, so far as the United States are in a condition to provide them, may be legally claimed by the State of Indiana.—(3: 358.)

4. But selections of land beyond the limits of five sections in width on each side of the extended portion of the canal, in lieu of land which has been sold or otherwise disposed of, cannot be made without the assent of Congress.—(*Ibid.*)

5. The deficiency of lands granted Ohio in act of 29th May, 1830, to make up the full quantity previously granted for the construction of a canal from Lake Erie to the Wabash, must be supplied from the alternate sections reserved to the United States, or out of other lands in the neighborhood near to the canal.—(3: 552.)

6. The Commissioner of the General Land Office properly refused to issue a patent for land entered by Governor Shannon of Ohio, and withdrawn from private entry in order to provide for executing the grant by Congress, by act of May 24, 1828, of lands to the State of Ohio, for the purpose of aiding that State to extend the Miami canal from Dayton to Lake Erie, because it did not appear whether or not the land for which the patent was claimed was situated within the limits of the reservations, and because, if it was, the requisite notice had not been given by the register and receiver, as provided for in the regulations concerning the public lands.—(3: 650.)

CERTIFICATE.

(SEE FUNDED DEBT.)

CITIZENSHIP.

1. Free negroes in Virginia are not citizens in the sense in which the term "citizen" is used in the acts regulating foreign and the coasting trade, so as to be qualified to command vessels.—(1: 506.)

2. Indians are not citizens of the United States, but domestic subjects.—(7: 746.) .

3. The general statutes of naturalization do not apply to Indians ; but they may be naturalized by special act of Congress, or by treaty.—(*Ibid.*)

4. Indians are not capable of pre-empting the public lands of the United States.—(*Ibid.*)

5. Half-breed Indians are to be treated as Indians in all respects, so long as they retain their tribal relations.—(*Ibid.*)

6. Indians and half-breed Indians do not become citizens of the United States by being declared electors by any one of the States.—(*Ibid.*)

7. Query, whether half-breed Indians may become citizens by voluntarily leaving their tribal connexion, and without any special provision of law in their behalf.—(*Ibid.*)

8. The President cannot restore a convict to the rights of citizenship beyond the effect of a pardon.—(7: 760.) ¹

¹ Persons born in the colonies, before the Declaration of Independence, had a right to elect whether they would retain their native allegiance to the British crown, or would become citizens of the several States.—(*Inglis vs. Trustees of the Sailors' Snug Harbor*, 3 Pet., 99.) See, also, *Talbot vs. Janson*, 3 Dal., 133 ; *Hepburn vs. Ellzey*, 2 Cranch, 445.

CIVIL POWER.

1. Although the subordination of the military to the civil authorities of the country is an axiom of our government, it was never intended to place the military entirely at the mercy of any individual who might choose to call for their surrender.—(2: 10.)

2. If this were the case, the military operations of the government might be weakened, impeded, or obstructed, whenever an individual, from private resentment, political intrigue, or worse motives, should choose to interfere with their operations.—(*Ibid.*)

3. As it rests in the discretion of the President in what cases he will exercise his military authority to constrain those composing the army to surrender themselves to the civil authority of the States, it would seem proper to adopt by analogy the principle of the Constitution relative to the surrender of fugitives by the governors of the States, applying the details of the act of Congress of the 12th of February, 1793, respecting fugitives from justice.—(*Ibid.*)

4. Where a demand by a civil magistrate stated that certain officers, naming them, “are charged on oath before me with having violated the known laws of the land, and especially of the State of New Jersey,” &c.: *Held*, that such a demand was not sufficiently specific, and ought not to be acceded to, under the 33d article of the rules and articles of war —(*Ibid.*)

5. It is wholly inadmissible under our government to place the military above the civil authority, and therefore, whilst the latter shall have the custody of an officer of the navy for the purpose of trying and punishing him for a homicide, he cannot legally be made amenable to a court-martial.—(3: 466.)

CLAIMS.

- I. GENERALLY.
 - II. FOR SERVICES.
 - III. OF STATES AND CORPORATE BODIES.
 - IV. UNDER TREATIES AND THE LAWS OF NATIONS.
 - V. PAYMENT, TO WHOM TO BE MADE.
 - VI. POWER OF SECRETARY OF TREASURY TO ALLOW.
 - VII. HOW BARRED.
-

I.—GENERALLY.

1. The government is not bound to satisfy a judgment against its agent when it does not fully appear that he was such agent, and where the avails of the property sued for were retained by him and were sufficient to indemnify.—(1: 99, 127.)

2. The term *expenses* in the resolve, in behalf of Bingham, means the money expended in and about the suit.—(*Ibid.*)

3. A vessel was chartered to the Navy Department for the purpose of carrying stores to Malta and Syracuse, without stipulation in the charter-party to furnish any particular or special papers, the voyage and risk being fixed by the charter party and freight charged accordingly, and was captured by a Spanish privateer, on the ground that the vessel was carrying naval stores to the port of an enemy of Spain: *Held*, that the owners, and not the United States, are liable for the loss.—(1: 162.)

4. Where the Quartermaster General agreed to pay \$8,000 for a vessel to the owner, on condition that the latter should deliver her in good condition at the mouth of the Apalachicola by a specified time, and the latter agreed to do so, “damages of the sea or being prevented by an enemy excepted,” yet failed to deliver her in time, but, under a division order from General Jackson, directing the Quartermaster General to purchase the vessel “if to be had at cost here,” he took possession of her without any consultation with the owner or agent, and sent her up the river with supplies for the army: *Held*, that by virtue of the conversion, the United States ought to pay for her, not the stipulated price, but *quantum valebat*.—(1: 245.)

5. When the British invaded Castine, the commander of the United States ship *Adams*, then lying in that port, burnt her, to prevent her from falling into the hands of the enemy, and the fire communicated with a neighboring warehouse, in which there was valuable property destroyed: *Held*, that the damage was one of those casualties of war resulting from exposure, and that the government was not liable therefor.—(1: 255.)

6. By the settlement of a disputed line between New York and New Hampshire, the owners of lands thrown into the latter State, and subsequently into Vermont, and the title being ultimately extinguished by a compromise for a pecuniary consideration, have no valid claim to indemnity from the government.—(1: 320.)

7. Mrs. C. Thornton, of London, formerly of Northumberland, widow of Colonel Presley Thornton, and devisee under his will of an annuity charged upon his estate in Northumberland and Culpeper, which estate subject thereto was devised to the testator's two sons in moieties, is entitled to certain arrears of such annuity, although she left this country in 1775 from political hostility to the principles of the revolution; the estate having been partitioned among the heirs, and one moiety conveyed to another person or persons, and by him or them to the United States, and even though it may have been for the time suspended or extinguished by the confiscating and sequestrating laws of Virginia.—(1: 494.)

8. Although the annuity is charged on the profits of the estate, it was clearly the testator's intent that it should be paid in any event and be charged on the land; and as the deed of the moiety of one of the two sons to the person from whom the United States derived their title refers to the will creating such annuity, the latter must be considered as taking title with notice that they were charged therewith.—(*Ibid.*)

9. Such claimant is entitled to interest only from the time of filing her bill, it not appearing that she had an agent in this country to demand or receive payment prior thereto.—(*Ibid.*)

10. No claims for losses sustained by officers, volunteers, rangers, or others engaged in the campaign against the Seminole Indians are to be allowed, except those which took place in consequence of the government of the United States failing to supply sufficient forage, and to such claimants only as can furnish the evidence required by the proviso of act May 4, 1822.—(1: 543.)

11. Upon facts submitted, the government cannot legally retain out of the moneys directed (act May 24, 1824) to be paid to the assignees

and representatives of J. H. Piatt, the amount of the bill of J. H. Piatt & Co., which had been assigned to the treasurer under protest.—(1: 700.)

12. In order to entitle parties to compensation for horses lost in service, the animals must have died from some of the causes enumerated in the law.—(2: 570.)

13. Losses of horses to the owner, where the death cannot be proved, have not been provided for under the act February 19, 1833.—(*Ibid.*)

14. Where horses died for want of forage, the fact of the owners being paid for forage will not preclude compensation.—(*Ibid.*)

15. Where the lessee of the lead mines at Galena and holder of a smelting license had become indebted to the United States in a certain amount of lead for rent reserved to be paid to the superintendent, and deposited in a store or warehouse for the use of the United States, and the account was placed in the hands of Major Campbell for collection, who, instead of confining himself to that duty, took an assignment of the mineral ashes, and proceeded to smelt them, under the belief that he would be able to pay the rent due the government and indemnify himself for a debt due him from the lessee, from whom he subsequently took a conveyance of the leased and smelting premises, and all his other property in trust, and then returned the account as paid, and thus became himself accountable to the government as receiver, and afterwards delivered the lead, which was mingled with other lead in the warehouse; and finally, apprehending loss from the transaction, applies to have the loss refunded by the superintendent: *Held*, that there is no authority except in the legislative department which can afford Major Campbell relief.—(2: 615.)

16. The act to provide for the payment of claims for property lost, &c., during the late war with the Indians on the frontiers of Illinois and Michigan Territory, does not authorize an allowance to any person (except minors provided for in the third section) who was not personally engaged in the service of the United States in the campaigns referred to.—(2: 658.)

17. Yet it is not indispensable that claimants shall show absolute property in the horse or equipage lost in the service. A possessory title of horses, &c., contracted to be paid for, and until which the title was to remain in the furnisher, is such a qualified property as entitles the possessors, within the equity of the law, to be regarded as owners.—(*Ibid.*)

18. Allowances for horses are authorized where it shall appear that they were lost without any fault or negligence on the part of their

owner or owners in battle; or by dying of wounds received in battle, while yet in the public service; or by dying from being unavoidably abandoned or lost while in the public service, in consequence of the failure of the United States to supply sufficient forage; or when lost, because the rider was dismounted and separated from his horse and ordered to do military duty on foot, at a detached station.—(*Ibid.*)

19. Allowances for equipage are authorized when it shall appear that it was actually lost in battle, or in consequence of the loss of a horse to which it belonged. But whether harness shall be considered as equipage is a question of fact and military science rather than of law —(*Ibid.*)

20. If a third person receive a treasury draft, in due course of business, for a valuable consideration, with proper endorsements, and without suspicion that the payee, or any bearer thereof, parted with it unlawfully or improperly, he has a claim upon the government for its amount.—(3: 30.)

21. But if such third person have any notice that the draft was issued for public purposes, and entrusted to an individual to present at the bank and receive the money thereon for the army, and had lost it by gambling, or some similar misconduct, such notice defeats his claim upon the government.—(*Ibid.*)

22. The persons referred to in the act of March 19, 1836, for the relief of the sufferers by fire in the city of New York, before its modification by the amendatory act of April 5, who, upon notice given by the collector, made returns of their losses, and tendered new bonds, which were accepted by the collector, are entitled to the full benefit of that act.—(3: 122.)

23. But those whose bonds were proffered, but not executed, prior to the passage of the amendatory act, are not entitled to the benefit of the original law.—(*Ibid.*)

24. Where a merchant vessel was detained by the agent of the United States at Buenos Ayres, and by him sent to the United States, and an act of Congress was subsequently passed directing the actual loss to the owner to be ascertained and paid, and the Fifth Auditor had disallowed a portion of the items claimed: *Held*, that the owner is entitled only to the actual loss sustained.—1 Johnson's Rep., 143; 3 Wheat., 246; 9 do., 362; 13 Johnson, 141, 561; 2 Cranch, 64.—(3: 216.)

25. The loss of the use of a vessel thus detained, during her detention, was the first and most direct consequence of that detention;

the damage occasioned thereby is not constructive and consequential, but actual, positive, and real.—(*Ibid.*)

26. The Auditor may adopt the principle of difference in value, or demurrage, as the standard of his action; adding thereto, in either case, such additional allowances as will meet the actual loss of the party. Where the difference in value is adopted as the standard, interest, and personal and other expenses are to be added; where the demurrage is the standard, all necessary expenses not relating to the use or management of the vessel, are to be allowed in addition.—(*Ibid.*)

27. The United States are bound to pay the Spanish inhabitants of Florida the value of slaves carried away or killed by the troops of the United States, shortly prior to the treaty with Spain of 22d February, 1819.—(3: 391.)

28. Remuneration should also be made for the services of such slaves as have been restored to their owners, during the period of time their owners were deprived of their services.—(*Ibid.*)

29. The claim of Lieutenant Hunter for reimbursement of expenditures in making experiments for propelling war steamers by horizontal wheels, is within the act of Congress passed at the extra session, and that for making appropriations for the naval service in 1841.—(3: 659.)

30. The 17th section of the act of 1834, relative to Indian depredations, applies only to tortious and violent, if not to felonious taking. (4: 72.)

31. The United States undertook to guaranty against violence on both sides; but differences in matters of contract do not come within the 16th and 17th sections of that act. Provision is made for such controversies in the 22d section, and the presumption of law is against the whites.—(*Ibid.*)

32. The claim of Colonel Thomas does not come within any fair interpretation of the sixth article of his contract with the government. The district court having passed upon the claim, it is doubtful whether the Executive can go beyond what was thus decided.—(4: 81.) See *post*, 36.

33. Indians at peace with the United States are, in no received sense of the word, "an enemy," and cannot be judicially considered as embraced within it.—(*Ibid.*)

34. The owners of a steamboat chartered to take troops and stores from Pittsburg to Fort Smith, on the Arkansas river, at \$230 per day until discharged, and which, after having been discharged, was de-

tained at Cincinnati, on its way back, on account of low water, are not entitled to pay for that detention.—(4: 83.)

35. The United States had nothing to do with the steamboat after the charter-party was satisfied with the landing of the passengers, or the discharge thereof by the assistant quartermaster.—(*Ibid.*)

36. The case of Colonel Thomas being reconsidered, it is held that a judgment of the circuit court of New York does not preclude the accounting officers from going beyond the items actually proven by way of offset in the case.—(4: 86.) *See ante*, 32.

37. The Secretary of War is at liberty to take up the case on the footing of equity and justice—the basis of chancery jurisdiction.—(*Ibid.*)

38. If the evidence brings the case within the act of 1802, there is an equitable obligation on the part of the United States to indemnify against loss; for by that act the United States agree to guaranty eventually all persons against depredations committed by Indians residing in the Indian country. But in that case it must be proved, or at least rendered probable, that the robbers in question were Indians residing in the Indian country.—(*Ibid.*)

39. If this cannot be made out, then it must be shown that the United States were guilty of some *delictum laches*, or delay, exposing the claimant to a loss which he would not otherwise have encountered. (*Ibid.*)

40. The Third Auditor is to ascertain the actual damages sustained by the claimant, but nothing like exemplary or vindictive retribution is admissible.—(4: 112.)

41. The damages must be such as the claimant would be entitled to recover upon the principles of law as applicable to other cases.—(*Ibid.*)

42. By those principles no damages can be allowed but such as directly flow, in the natural and ordinary course of things, from the trespass or omission; distant and accidental consequences, however they may aggravate the claimant's loss, are to be laid out of the question.—(*Ibid.*)

43. Neither can vague surmises and calculations of the fruits of projected enterprises be taken into the account; the damages must have been directly *caused*, not merely occasioned, by the interference of the agent of the United States.—(*Ibid.*)

44. Whatever agents may have done beyond their instructions, they did in their own wrong, and the government is not responsible.—(*Ibid.*)

45. A lot of land in the St. Louis common-fields having been set off as vacant by the surveyor general for the use of schools, it not having been entered on the lists of the recorder, as required of private claims in such cases, and the United States having relinquished all their right, title, and interest in and to all out lots and common-field lots, reserved for the support of schools to the State of Missouri, and the same now being claimed by heirs of one Vivvarenne: *Held* that the Executive Department cannot administer relief in such a case; that the parties must assert their rights before the judiciary.—(4: 510.)

46. The claim for damages for an alleged breach of the contract entered into with a former Secretary of the Navy by A. G. & A. K. Benson for the transportation to the Pacific ocean of all the naval stores which the government should have occasion to send there during a certain period, by reason of the withholding of the transportation of certain freight from them, or the sending it by the public vessels, cannot be allowed by the Executive Department.—(5: 28.)

47. There is no law which authorizes the head of any department to supervise the acts of his predecessors, and to award damages for their assumed misconduct, to be paid out of the public treasury.—(*Ibid.*)

48. This claim having been once considered at the proper department and rejected, after a reference to the President, is *res judicata*.—(*Ibid.*)

49. Congress having resolved that the claim of the representatives of Churchill Gibbs was provided for by the act of July 5, 1832; and the House of Representatives having again resolved to that effect, after the Executive Department had decided otherwise, it is now the duty of the Executive Department to liquidate it.—(5: 82.)

50. The acts of Congress of the 3d March, 1835, and 12th August, 1848, are legislative interpretations of the act of 5th July, 1832, and the expressions of opinions that it was the purpose of the 3d section of the act of 1832 to provide for Virginia commutation claims for half pay, as well as those for half pay; and those legislative interpretations and opinions are binding on the Executive, and require the allowance of the present claim.—(5: 83.)

51. The Executive has no authority to allow the claim of Colonel J. M. Cresey for disbursements made by him in organizing a regiment of volunteers during the war with Mexico, under the authority of Major General Gaines; but the claim being meritorious, is commended to the favorable consideration of Congress.—(5: 102.)

52. The joint resolutions of 1836 and 1837, and the act of June 2, 1848, require the troops for which disbursements should be made to have been mustered and received into service.—(*Ibid.*)

53. Under the resolution of Congress of March 3, 1849, respecting the claim of A. G. & A. K. Benson, arising out of contracts made with the Navy Department for the transportation of naval stores to and upon the Pacific, the Secretary has authority as well to pay as to adjust it.—(5 : 126.)

54. The charter-party claim, though not previously made, if arising out of the contracts mentioned in the resolution, is embraced by it.—(*Ibid.*)

55. The amount which may be ascertained to be due is payable out of, and chargeable to, the appropriation for the current year for contingent expenses for transportation.—(*Ibid.*)

56. The amount of six thousand eight hundred and ninety-two dollars, allowed by the Secretary of the Navy on account of the claim of A. G. & A. K. Benson against the Navy Department, may and should be paid from the appropriation for the year ending 30th June, 1850, for contingent expenses that may accrue for freights and transportation.—(5 : 131.)

57. The representatives of Thomas Armstead, a captain who served in a Virginia regiment in the revolutionary war prior to 21st May, 1782, when he became a supernumerary, to the 3d of April, 1783, and who died 1st September, 1809, to whom the Virginia legislature allowed \$2,400 in 1826 as commutation, without interest, and to whom Congress subsequently allowed half pay from 21st May, 1782, to said 3d April, 1783, are not now entitled to have the account reopened and restated, so as to allow interest on the said commutation.—(5 : 164.)

58. The act of 11th March, 1852, for the relief of Lieutenant Colonel Mitchell, does not entitle him to indemnification for expenses sustained in his efforts to procure the passage of said act, nor for loss of credit occasioned by a suit being brought against him for matters done under color of office ; but the Secretary of the Treasury will be justified in refunding to him the taxable costs, and the reasonable counsel fees incurred in the defence of such suit.—(5 : 622.)

59. The act of 8th May, 1820, for the relief of the legal representatives of Henry Willis, does not contemplate their entering town lots in satisfaction of the lands granted them.—(5 : 752.)

60. Sundry parties having conflicting claims against the government under a statute making provision to defray the expenses of

removing the Choctaw Indians from the State of Mississippi, an arrangement between them was made to refer the matter to the arbitration of J. M. C. and P. R. F., with power of attorney to receive the money on their behalf and receipt for the same to the United States: *Held*, that this is not a case of the transfer or assignment of a claim, or of agency thereof, forbidden by acts of Congress.—(6: 60.)

II.—FOR SERVICES.

1. Governor Cass, having been employed by the government to perform services which did not belong to his duty as governor of Michigan Territory, has a fair claim to compensation on the principle of a *quantum meruit*.—(2: 189.)

2. Although the government will pay for bringing home seamen who have been discharged in foreign ports, yet where a merchantman received a seaman on board for the purpose of bringing him home, and brought him only half the way, when he voluntarily left, the captain cannot justly claim full pay for the voyage, but only a compensation for the distance he brought him.—(2: 468.)

3. Claims for professional services, under the treaty with the Cherokees of 1836, must be for services of a lawful nature, and performed at the instance and request of the acting authorities of the nation. (3: 207.)

4. The sum of sixty thousand dollars constitutes the whole amount which can be paid by the United States for the claims of citizens for services rendered the Cherokee nation by the treaty of 1836.—(*Ibid.*)

5. The government is not responsible for the acts of the assistant commissary general, who had no authority to discharge a vessel without the master's consent; and the claimant is only entitled to freight *pro rata*.—(4: 142.)

6. The delivery took place in consequence of an interference, for which the government is no more responsible than for captures by enemies or accidents of the seas.—(*Ibid.*)

7. Where A, who was the partner of B in one contract for carrying the mail, contracted individually with the department to carry another mail on another route, and gave B and C as sureties for the performance of the same, and a portion of the contract price had been along, from time to time during the existence of the contract, paid to B, without objection on the part of A, whose accounts were finally adjusted before the passage of the act of March 3, 1845, by charging to him the money paid to B, but who, being dissatisfied with such adjustment, on the 5th of September, 1840, applied to the Sixth Auditor

of the Treasury for payment to him of so much of his contract price as had been paid to B, and, on being refused, applied to a subsequent Postmaster General, and then to Congress, without success, and again to the Postmaster General, for allowance of his claim: *Held*, that the account, having been once settled, cannot be reopened without authority of law.—(4: 429.)

8. And it is further decided, that a claimant who appeals to Congress after an unsuccessful application at the department must abide by his election, whether the result shall be favorable or otherwise.—(*Ibid.*)

9. The representatives of a lieutenant in a Virginia State regiment, afterwards transferred to the continental establishment, who in his lifetime obtained a judgment against said State for commutation of five years' full pay in lieu of half pay for life, and received payment thereof in 1792, are not entitled, under existing laws, to be allowed a claim for further compensation for services rendered by their ancestor.—(4: 590.)

10. This claim was considered and rejected by the department in 1833, on the ground that it had been paid.—(*Ibid.*)

11. It is not provided for in the 3d section of the act of 1832, and cannot be allowed except under special authority from Congress.—(*Ibid.*)

12. Claimants under the 10th article of the treaty of 1835-6, who presented their demands to the first board, and received their due proportion of the sixty thousand dollars therein provided for services rendered the Cherokee nation, are not entitled to any further allowance from the present board.—(4: 613.)

13. The appropriation of sixty thousand dollars in the 10th article of said treaty was in full discharge of all obligations in that respect assumed by the United States.—(*Ibid.*)

14. Where a vessel was chartered by the United States for three months, and longer if required, at nine hundred dollars per month, to transport a cargo from Philadelphia to the island of Lobos, at the cost and charges of the owners, who covenanted that she was seaworthy, &c.; and having received her freight, proceeded as far as the Delaware breakwater, where she sunk and lost the entire cargo; and about two months after was raised and tendered to an agent of the government at Philadelphia for the purpose of fulfilling the charter-party; and the owners having received payment from the date of contract until she went down, making claim, under the charter-party,

for freight afterwards : *Held* that the claim was not admissible.—(5: 3.)

15. There having been no cargo to be forwarded after the wreck, and it being impracticable to raise and repair the vessel in season to reach the place of destination before the expiration of the time stipulated for the service, it cannot be maintained that the subsequent tender was equivalent to performance, nor constituted the ground of any valid claim for freight.—(*Ibid.*)

16. Where a vessel was chartered by the United States for a period of not less than three months, to be employed in transporting troops, animals, and stores to and from such places, ports, and roadsteads in the Gulf of Mexico as might be required, at one hundred dollars per day from a certain date to her sailing for the island of Lobos, and three thousand dollars for the run from Brazos Santiago to the said island, where twelve days were to be allowed for unloading, and after that time to be paid for at the rate of one hundred dollars per day for the balance of the three months, at the expiration of which she was to be discharged ; but, having arrived at Lobos, was immediately ordered to Vera Cruz, where her cargo was discharged ; and claim being made for the per diem allowance after she left Lobos : *Held*, that it is very clear that the owners became entitled to one hundred dollars per day during the whole period of the three months, except the time occupied in the run from Brazos Santiago to the island of Lobos.—(5: 5.)

17. Congress having made an appropriation to pay the “balance” due Ebenezer Warner for constructing a light-house at White Fish Point, on Lake Superior, after he had been paid the price stipulated in his contract, and after he had petitioned that body for a further allowance on account of his having been obliged to reconstruct some portion of the tower, which had been riven by lightning during the progress of the work, it must be inferred that the term “balance” was used not with reference to the contract price, but in connexion with the additional expenditure caused the contractor by a calamity which he could not avert.—(5: 94.)

18. The appropriation is due to the claimant ; Congress designed it to be paid him ; and there is no discretion left the accounting officers of the Treasury to disallow it, in whole or in part.—(*Ibid.*)

19. The claim of Thompson & Harris, for professional services rendered by them for the Cherokee Indians, cannot be lawfully allowed

and paid out of the appropriations made by Congress to carry into effect the treaties of 1835 and 1846.—(5: 363.)

20. The terms of the act of 1850 require it to be made in conformity with the treaty of 1846. And both of the treaties in effect require the moneys stipulated to be paid, to be divided among them equally, and paid to them individually.—(5: 378-9.)

21. The Secretary of State may sanction the reimbursement of lieutenants of the corps of topographical engineers, for personal expenses incurred in the execution of the 6th article of the treaty of Washington of 1842, and in reconstructing the maps showing the boundaries under that treaty.—(5: 671.)

22. The Attorney General declines to vary his opinion previously given relative to the claim of Messrs. Bowie & Kurtz.—(5: 708.)

The validity of the claim must depend upon the facts concerning the extension of the voyage beyond the limit of the original engagement, and without the consent of her owners.—(*Ibid.*)

23. Where a contractor with the government for army supplies turned out to a firm, of which he had before that time purchased kerseys, which had been received into store in the United States arsenal, Commissary General's negotiable certificate for the same goods, the firm is entitled to recover the amount of the certificate, notwithstanding the contractor may be upon his whole account a defaulter to the government.—(5: 734.)

24. The President is authorized to allow the claim of Messrs. Bowie & Kurtz, agents of the owners of the ship *Allegany*, for reasonable freight from Algiers to Gibraltar.—(5: 740.)

25. To determine what is meant by the word "reasonable," the Secretary of State will appeal to the best sources of such information.—(5: 741.)

(See *Compensation.*)

III.—OF STATES AND CORPORATE BODIES.

1. The Secretary of the Treasury cannot legally pay to the State of Illinois the three per cent. of the proceeds arising from the sales of public lands within the same, reserved under the acts of April 18, 1818, and December 12, 1820, unless the account required by the last mentioned act indicated that the moneys heretofore paid have been applied to the encouragement of learning within the State of Illinois.—(2: 268.)

2. The claim of the city of Augusta, for expenses incurred and

supplies furnished on account of the public service for the defence of Florida comes within the act of May 28, 1836, and ought to be allowed.—(3: 388.)

3. Commutations for five years' full pay are not included in, and provided for by, the 3d section of the act of 1832.—(4: 313.)

4. By that section the Secretary of the Treasury is only required to adjust and settle the claims of certain regiments and corps for half pay for life, which had not been prosecuted to judgment against the State of Virginia, and for which the State is bound on the principles decided in the supreme court of that State in other cases.—(*Ibid.*)

5. The question, moreover, is regarded as adjudicated, and therefore not properly open for examination except by Congress.—(*Ibid.*)

6. The claim made in behalf of Virginia by Thomas Green, agent of that State, is just, and falls within the provisions of the 2d section of the act of 1832; and the balance of the appropriations made by that act would be applicable to the payment of it, were it not that it has been carried to the surplus fund, from which it cannot be withdrawn except by act of Congress.—(4: 515.)

7. An invasion of the custom-house in Texas by citizens of Arkansas, and the violent abstraction therefrom of property, under a claim of title, however much to be disapproved and condemned, constitute no ground of claim against the United States.—(4: 332.)

8. The general government can in nowise be held responsible for the acts of private trespassers; they must be punished in the tribunals established by law, or be prosecuted for the recovery of, or value of the goods, either in the State or federal courts.—(*Ibid.*)

9. Under the act of March 3, 1843, and the joint resolution of the 30th April, 1844, the Secretary of War cannot direct the accounting officers to allow claims for supplies beyond the quantity to which the troops were entitled under existing laws. The act and resolution must be read as *in pari materiâ*.—(4: 352.)

10. The resolution of the legislature of the State of Missouri, authorizing the governor of that State to receive her distributive share of the funds arising under the provisions of the act of Congress of September 4, 1841, not having been signed by the President of the Senate, is not a sufficient authority to sanction the payment.—(4: 716.)

11. The claim of the State of Alabama to be allowed five per cent. of the net proceeds of the lands of the United States lying within her limits, received on sales made before as well as after the 1st September, 1819, is admissible on the construction given to similar acts relating to Ohio, Indiana, and Illinois.—(5: 186.)

12. The State is, therefore, entitled to have all the moneys received from sales after the 1st September, 1819, brought into her account, whether such sales were made before or after that date.—(*Ibid.*)

IV.—UNDER TREATIES AND THE LAWS OF NATIONS.

1.—GENERALLY.

2.—CLAIMS UNDER INDIAN TREATIES.

1.—GENERALLY.

1. A vessel, alleged to be Danish property, was seized by an American vessel as French property, on the south side of the island of St. Domingo. While awaiting examination under the American flag, the vessel was again seized by a British ship: *Held*, that the United States were not liable to indemnify the Danish owner, though the American captain might be.—(1: 106.)

2. A Portuguese brig had been captured by a French schooner and, thirteen days afterwards, recaptured by an American vessel and taken to St. Kitts, where she was adjudged to be restored to the owner on payment of salvage: *Held*, that the United States were not liable, under the French treaty, for property thus recaptured.—(1: 111.)

3. A French vessel was captured and condemned as lawful prize, prior to the treaty of September 30, 1800. One moiety of the proceeds of the vessel was paid to the United States, and the other to the captors, after the signing of the treaty. Subsequently, the moiety paid to the United States was restored to the claimants by decree of the Supreme Court: *Held*, that the government was not liable to pay the claimants the other moiety.—(1: 114—119.)

4. Demands for freight where individuals may have transported articles for the French government, or for its citizens, as they are within no positive provisions of the treaty, cannot be sustained; the United States, in no event, and on no principle, being bound to protect such claims.—(1: 137.)

5. The *Isabella*, having been condemned by the Supreme Court of the United States as a British vessel, falsely and fraudulently covered by Spanish documents, and consequently held to be good prize of war, (6 Wheat. 1: 100,) and a claim being made by Alonzo Benigno Munoz for reimbursement by Congress: *Held*, that his title to a claim can be founded only on the admission of such a degree of corruption

in the tribunals through which the case has passed, as would make it the duty of the committee which admits his claim to direct their impeachment.—(1 : 536.)

6. The commissioners under the Spanish treaty allowed Mr. Cathcart a sum of money, which, in his memorial to them, he stated *he alone* was entitled to receive ; and it afterwards appeared that there were other claimants to the money : *Held*, that it was a case in which it was expedient to respect the injunction of the court, directing the officers of the treasury not to pay the money till the case was judicially determined.—(1 : 681.)

7. The Spanish owners of certain negro slaves, who were shipped from Havana for Pensacola, in an American vessel, which was captured under the guns of the fort at Barrancas, then occupied by an American force under the command of Colonel G. M. Brooke, and whilst proceeding to adjudication, were seized, with the vessel, by a revenue vessel and carried into the port of Mobile, where restitution of the slaves was awarded, &c., and the vessel condemned, have not a claim embraced by the provisions of the treaty with Spain.—(2 : 198.)

8. By the last clause of the ninth article of the treaty of 1819, with Spain, and the acts of March 23, 1823, and June 26, 1834, the Secretary of the Treasury is required to pay the claims for injuries caused by the military operations of 1812 and 1813, on which a favorable report may have been made by the superior court of St. Augustine, where, upon examination of the decision and the evidence on which it is founded, he shall deem the same to be just.—(3 : 677.)

9. In these cases the examination of the judge is to enlighten the mind of the Secretary, as the verdict of a jury in a feigned issue is to enlighten the conscience of the chancellor ; and his decision is simply *arbitrium boni viri*, and not conclusive in any degree upon the Secretary. He must, nevertheless, look into the whole matter, and ascertain for himself whether the government is liable, and to what extent.—(*Ibid.*)

10. If the case be one of injury by the military operations referred to, in which no ordinary care of the proprietor or his agents, and no ordinary goodness of the property supposed to have been injured would have guarantied it against the alleged injuries, it is within the treaty, and the claimant is entitled to his damages.—(*Ibid.*)

11. In respect to the damages, the Secretary ought to be satisfied that the consequences which are alleged to have ensued upon the trespasses in question were no more than what, in the ordinary course of

things, would be expected to be caused by them ; that is, that after they occurred there was no laches on the part of the owner in his efforts to repair them, and that the evils, whatever they were, were not aggravated by some defect peculiar to the character and condition of his property.—(*Ibid.*)

12. A claimant representing himself to have been impressed into the British service after the action between the Chesapeake and Leopard, in 1807, when Great Britain and the United States were at peace, and not stating what his conduct was during the action to save the ship, nor what was his behavior afterwards, does not bring his case within the provisions of the act of April 22, 1800. The claim of John Strahan, therefore, as the same now appears before the Executive Department, is inadmissible.—(5 : 185.)

13. Claims upon the government for injuries sustained by Spanish officers and individual Spanish inhabitants during the military operations of the American army in Florida, preferred under the 9th article of the treaty between the United States and Spain, are required to be established judicially ; yet the acts of Congress passed to carry that article of the treaty into effect do not make the decisions of the judges of the superior courts at St. Augustine and Pensacola conclusive in respect to them.—(5 : 333.)

14. Congress, in providing a tribunal for the adjudication of these claims, deemed it compatible with the public interest to repose a part of the judicial authority in the judges of the territorial courts, and a part of it in the Secretary of the Treasury.—(*Ibid.*)

15. The judges were required to report their decisions and the evidence on which they were founded to a tribunal of revision, (the Secretary of the Treasury,) who, on being satisfied of their justice, and of their being within the provisions of the treaty, is required to pay them. The tribunal created for their adjudication, therefore, consists of the judges and the Secretary.—(*Ibid.*)

16. It was not the intention of Congress to limit the revisory power of the Secretary of the Treasury to questions of jurisdiction, but to extend it to the merits.—(*Ibid.*)

17. The acts of Congress are not in conflict with the treaty with Spain ; but if they were, the treaty must yield to them.—(*Ibid.*)

18. If the revisory power cannot be lawfully exercised, the Secretary's authority to pay is invalid.—(*Ibid.*)

19. The Secretary of the Treasury cannot allow the interest on these claims awarded by the Florida judges consistently with the long-settled construction of acts of Congress applicable to the subject.

A long series of uniform decisions, adverse to the allowance of interest on this species of claims, must be respected as having the effect and force of law.—(*Ibid.*)

20. The United States are not bound to make compensation to parties who have neglected to prosecute appeals in the courts invested with jurisdiction and power to administer relief.—(5 : 692.)

21. The extraordinary expenses of a party incurred in living at St. Mary's, whither he retired after the destruction of his property in Florida, are a matter too remotely consequential to be the proper subject of damages under the 9th article of the treaty of 1819 between the United States and Spain.—(6 : 530.)

22. In virtue of the acts of Congress which provide for the execution of the 9th article of the treaty between the United States and Spain for the cession of Florida, which awards damages in certain cases to inhabitants of Florida, the Secretary of the Treasury has lawful authority to determine whether the awards of the judge of the district court of Florida are "just and equitable" or not, and to allow or disallow the same accordingly, at his discretion.—(6 : 533.)

23. The decision of preceding Secretaries of the Treasury that interest is not allowable on such claims is to be considered as *res adjudicata*, and binding on the present Secretary.—(6 : 533.)

2.—CLAIMS UNDER INDIAN TREATIES.

1. The source of the claims of the people of Georgia, under the treaty of Indian Spring, was wrongs done by the Creek nation to them prior to 1802, consisting partly in the destruction of their property, and partly in the seizure, carrying away and detention of other property, such as negroes, horses, &c. ; but by the several treaties, agreements, and the award of the President, they have been disposed of.—(2 : 110.)

2. The people of Georgia had no claim on the Creek nation for property destroyed prior to the date of the treaty of Colerain ; but they had for property destroyed between the date of that treaty and the 30th of March, 1802, so far as the same was not satisfied under the provisions of the act of May 19, 1796, to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers, and the act of March 3, 1799, under the same title, subject to any set-off for claims of the same description within the same period which the Creek nation might be able to establish on their part, and which were not satisfied under the provisions of the said acts. They

are also entitled to claim for the issue of all the females whose mothers ought to have been delivered up ; but not to interest.—(*Ibid.*)

3. By the treaty with the Ottawas, concluded February 18, 1833, the United States absolutely agreed with the Indians to pay a certain sum (\$10,890) to Mr. Forsyth, and they are bound to execute the treaty as made, without requiring proof of the justice of the claim.—(2 : 562.)

4. Claims for professional services, under the treaty of 1836, with the Cherokees, must be for services of a lawful nature, and performed at the instance and request of the acting authorities of the nation.—(3 : 207.)

5. Sixty thousand dollars is the sum appropriated, and constitutes the whole amount which can be paid by the United States for the claims of citizens for services rendered the Cherokee nation by the treaty of 1836.—(*Ibid.*)

6. The decision of the question as to the payment of commutation to the Cherokees having been concurred in by two successive Secretaries of War, and also considered by one House of Congress and acted on there, ought properly to be regarded as *res judicata* before the Executive.—(3 : 657.)

7. Where the government entered into a contract with an individual for removing the Miamies, estimated at 650 souls, from Indiana to the country assigned them west of the Mississippi, and to subsist them, &c., for the sum of fifty-five thousand dollars, upon condition that should the number be greater or less there should be neither addition nor reduction of the amount, and that he should not use any force to compel them to emigrate ; and the said contractor, pursuant thereto, removed and subsisted 384 of the Indians, being all who were found willing to emigrate : *Held*, that said contractor has entitled himself to the whole sum stipulated for removing and subsisting the tribe.—(5 : 63.)

8. The opinion, given on the 9th October, 1850, in regard to claims under the Cherokee treaty, does not conflict with a previous opinion of Mr. Mason, and it is hereby affirmed.—(5 : 514.)

V.—PAYMENT, TO WHOM MADE.

1. Payment under the act of 24th May, 1824, “for relief of the assignees and legal representatives of John H. Piatt,” may be made to the assignees to the amount of their assignment ; and as the amount for which the claim was assigned was not fixed in the assignment, it

having been given for advances "made and to be made," the accounting officers must examine into and ascertain the amount actually due the assignees thereon.—(1: 692.)

2. Notes of the assignor exhibited by the assignees are *prima facie* evidence of the debt, yet the administrators have the right to controvert it.—(*Ibid.*)

3. Payment of the claims of the citizens of Georgia under the Creek treaty of 1821, and the law concerning them passed June 30, 1834, may be made by the President to the State of Georgia for the use of the claimants.—(2: 691.)

4. The President may lawfully authorize the proper officers of the government of Georgia to settle and adjust these claims, and may impose any limitation or restriction he may judge reasonable on the receipt of claims, so as to bar any which may not have been presented either to the proper authorities of that State, or to the persons appointed by the United States to make the investigations.—(*Ibid.*)

5. In the act for the relief of Clark Woodruff, the words "or his legal representatives" do not include assignees to whom he had previously conveyed part of the land.—(4: 51.)

6. According to the settled rules of interpretation, assignees are not legal representatives. Privies by representation, in the strict language of the law, are executors and administrators, &c., substitutes for the principal as to personal rights and responsibilities. The word does not even comprehend "heirs," much less "assignees."—(*Ibid.*)

7. Where a claimant executed a power of attorney to another, authorizing him to prosecute a claim before Congress, and to appoint a third person to assist him, and therein assigned to each of them one-fourth of what might be recovered, authorizing them to receive the same; and the claim being subsequently allowed by Congress, and demand of payment of one half thereof, pursuant to said assignment, being made at the treasury by the two attorneys, it was objected to by the administrators of the claimant, and refused on account of non-compliance with the act of July 29, 1846: *Held*, that the said act clearly prohibits payment to the attorneys, except they produce a warrant of attorney executed *subsequent* to the passage of the act allowing the claim, reciting the amount properly executed, attested, and acknowledged.—(5: 85.)

8. As the act of July 29, 1846, was passed prior to the execution of the power of attorney and assignment produced, this construction

impairs no previous contract obligations, nor infringes any vested right.—(*Ibid.*)

9. Where there is a conflict of claims between an executor and his assignees for an award of moneys by the Third Auditor to the decedent, the treasury officers should pay the same to the executor, who is the legal representative.—(3: 29.)

10. Where assignments in due form are presented, and no objection is made to the right of the assignee, it may be paid to him.—(*Ibid.*)

VI.—POWER OF SECRETARY OF TREASURY TO ALLOW.

1. The Secretary of the Treasury may examine into all the facts and circumstances which constitute the grounds upon which a judgment for losses has been rendered, and determine, upon the whole case, whether the decision of the judge is just.—(3: 635.)

2. The decision of the judge in such a case is not analogous to the award of an arbitrator; and if it were, the United States have not agreed to be bound by it.—(*Ibid.*)

3. The law has conferred upon the Secretary of the Treasury in such cases a jurisdiction as plenary to decide upon the whole case, as upon the judge himself.—(*Ibid.*)

4. The Secretary of the Treasury, however, has no legal power to recommit a case to a judge for rejudication.—(*Ibid.*)

5. The Secretary of the Treasury has power to review decisions of the superior court of Florida upon claims presented under the treaty with Spain and the acts of 1823 and 1834, and to pay the amount that he may adjudge to be due, the awards of the judge not being in law conclusive thereon.—(4: 286.)

6. The acts of March 3, 1823, and June 26, 1834, were both designed for the single purpose of carrying out the ninth article of the treaty of 1819 with Spain, and should be read as *in pari materia*.—(*Ibid.*)

7. The only authority vested in the Secretary to pay these claims is contained in the act of 1823, and can be exercised only under the restrictive proviso that he is satisfied that they are just and equitable.—(*Ibid.*)

8. The Secretary is not authorized to allow interest on these claims, it not having been the usage of the government to do so; nor does its duty to the claimants under the circumstances require it.—(*Ibid.*)

VII—HOW BARRED.

1. An award by commissioners, under the seventh article of the treaty with Great Britain, to several persons collectively, is conclusive upon the matter, so far that the right to transfer is vested in all persons in favor of whom it is made, and if those concerned have neglected to have invested in it the amount of their respective interests, or if they disagree as to their several proportions, the embarrassments are attributable to themselves. The government cannot undertake to decide among them.—(1: 153.)

2. Claims once passed upon and adjusted by the President, under the treaty of Indian Spring, cannot be reconsidered by his successor.—(2: 110.)

3. Lapse of time, whilst it furnishes strong presumptive evidence against the justice of claims, is no bar to payment. The delay may be accounted for.—(2: 463.)

4. Where a claim has been rejected by the accounting officers, and their decision has been confirmed by the Secretary of War, on appeal, it is doubtful whether the successor of the latter can review his decision. The party may carry his appeal to the President, who may affirm or reverse the decision. If he affirm, the claimant has no remedy, except at the hands of Congress, the decision being conclusive, so far as the Executive is concerned, unless there shall have been some mistake in matters of fact, arising from errors in calculation, or the absence of material testimony afterwards discovered.—(*Ibid.*)

5. Unless claims finally decided by the proper department shall in general be considered *res judicata*, every change in the officers thereof will produce a new hearing of the same, and the accounts of the government will remain open and undecided.—(*Ibid.*)

6. Where by the act of Congress the Third Auditor of the Treasury was required, under the direction of the Attorney General, to ascertain the actual damages which a claimant had sustained, and would be likely to recover, upon principles of law applicable to similar cases, by reason of the interference of any agent or agents of the United States, acting under their authority, with the use and enjoyment of his lands in East Florida, and under such instructions examined, and, in 1844, reported the same at an amount which was accepted; and the matter was, in 1847, re-opened, pursuant to a resolution of Congress, by direction of the Secretary of the Treasury, who, after causing some of the items reported by the Comptroller to be reduced

and others to be increased, made a final award of an additional amount, which was also subsequently received by the claimant, who, being dissatisfied therewith, desires the matter to be again re-opened: *Held*, that the decisions, awards, and payment were a final disposition of the claim, and to be esteemed in law a full execution of the act and resolution.—(5: 122.)

7. The receiving the sum, allowed by the decisions and awards, estops the claimant from questioning that such allowance and payment constituted a full and final satisfaction of his entire claim.—(*Ibid.*)

8. Good faith demanded that the money should not be taken, except, as it was awarded, as a perfect acquittance and discharge of the claim.—(5: 176.)

9. The act of July 9, 1798, bars the payment to representatives of moneys which have remained in the treasury to the credit of their deceased ancestor, unclaimed since 1781.—(5: 250.)

10. Moreover, the legal presumption arising from the lapse of so great a period of time renders it improper for the Secretary of the Treasury to pay claims of this character without special authority from Congress.—(*Ibid.*)

11. Where a claim against the Pottowatomies had been adjudicated and allowed by a former Secretary of the Interior, and certificates therefor issued by the Commissioner of Indian Affairs to the original claimants, payable from the annuities of that tribe in three annual instalments, which were subsequently transferred to Suydam, Sage & Co., and by them to the Merchants' Bank in New York, whose attorney claims payment; but before the same was made, a rehearing was demanded on behalf of the Indians, on the allegation that they were not originally liable to the Ewings for the amount adjudicated to them by the said Secretary; and a question having cotemporaneously arisen between the Ewings and the said bank concerning the terms and purposes of their transfer of the said certificates: *Held*, that the present Secretary of the Interior ought to regard the decision of his predecessor, as to the amount due from the Indians, as conclusive; and that payments of the certificates should be withheld until the conflicting claims of the Ewings and Merchants' Bank shall also be settled by the judiciary.—(5: 285.)

12. It is doubtful whether Indian annuities, granted by the government, ought to be regarded as legally assignable, unless made so by law.—(*Ibid.*)

(See *Accounts, Contracts.*)

CLERK.

(See *Compensation, Embezzlement, Courts.*)

1. A provision of statute in terms authorizes the appointment, with consent of the Senate, of three "principal clerks" of specific designation of positions: *Held*, that this provision was not repealed by a subsequent act for dividing clerks of the several departments into classes upon examination.—(6: 42.)

2. The Secretary of the Interior is empowered by law to judge of the necessity of expenses of clerk hire and other expenses in the office of clerks of circuit and district courts where there is a surplus of fees above the statute allowance for salary, and to regulate the same in advance, subject to such modifications of amount, either by enlargement or diminution, and either periodical or occasional, as the satisfactory administration of justice in the several circuits or districts may require.—(7: 543.)

3. The clerk of the courts of the United States in the District of Columbia is a collecting agent of the government, and is held to account for all the fees of his office received or receivable, deducting therefrom the maximum allowed him by law.—(7: 610.)

4. The clerks of the courts of the United States in the Territories of Minnesota, New Mexico, and Utah, are not embraced by the provisions of the act of February 26, 1851, giving augmented fees to those officers in the Territory of Oregon.—(7: 648.)

COLONIZATION.

1. There is no law authorizing the agent of the United States residing at Liberia, pursuant to the act of March 3, 1819, to purchase arms for defence of the negroes.—(2: 272.)

2. The President has no authority to erect buildings for the reception of transported Africans.—(4: 139.)

COMMISSIONERS.

1. Commissioners appointed under the act incorporating the United States Bank have no power as such to superintend the election of directors, or to interfere therein.—(1 : 19.)

2. Commissioners of public buildings have no power to make an order allowing the proprietors to erect buildings beyond the line of Water street.—(1 : 223.)

3. In the absence of any statute regulation concerning the compensation of commissioners of circuit courts, the courts themselves may fix the rate. Where rates have not been fixed, the amount may be ascertained by a reference to the local law of the State providing for similar services by local magistrates.—(4 : 233.)

4. Proceedings under the several acts of Congress before these commissioners in behalf of the United States are properly chargeable to the United States, and should be paid.—(*Ibid.*)

Commissioner of Customs.—(*See Revenue Laws.*)

Commissioner of Pensions.—(*See Pensions.*)

Commissioner of Patents.—(*See Patents.*)

Commissioner of the General Land Office.—(*See Lands—public.*)

5. The members of the Board of Commissioners of the Navy are still officers of the navy not below the rank of post-captains; and they are, whilst members of the Board, entitled to all the honors, privileges, and powers of that rank, and subject to all the duties of it, except such duties as are inconsistent with their services on the Board.—(5 : 761.)

6. The salary of the American Commissioner commenced on his taking the oath of office; and he is entitled to the cost of transportation to and from London.—(6 : 65.)

7. The Commissioner of the United States in China, while he is a diplomatic officer by the law of nations, is also a judicial officer by treaty and by statute.—(7 : 186.)

8. The provision of the new act, which contemplates the appointment only of an envoy extraordinary to China, is imperfect; for although the first minister of the United States, in China, held those two distinct commissions, yet a repetition of that fact at this moment

would not be compatible with the diplomatic relations at present existing between the United States and China.—(*Ibid.*)

9. Under the act of the last Congress for promoting the efficiency of the navy, which provides for a board consisting of five captains, five commanders, and five lieutenants, to examine into the competency of the officers of the navy, and which further provides that no officer on said board shall examine into or report upon the efficiency of officers of a grade above them, the effect is to exclude any of such officers of the board from being present at the deliberations concerning officers their superior in grade.—(7 : 282.)

10. The commissioners for the adjudication of private land claims in California are a quasi court.—(7 : 303.)

11. Commissioners, appointed for the performance of a special duty in virtue of a statute, cannot continue to act as such after such statute shall have expired by its own limitation.—(7 : 448.)

12. Case of allowance to a commissioner, for running the boundary line between the United States and the Mexican republic, of expenses of his return to the place of his domicil at the time of appointment.—(7 : 627.)

COMPENSATION.

- I. GENERALLY.
 - II. OF CIVIL OFFICERS OF THE GOVERNMENT.
 - III. OF OFFICERS OF THE ARMY AND NAVY.
 - 1. GENERALLY.
 - 2. NON-COMMISSIONED OFFICERS.
 - IV. OF EMPLOYEES OF THE GOVERNMENT.
 - V. OF SOLDIERS AND MARINES.
 - VI. COMPENSATION—WHEN IT COMMENCES.
-

I.—GENERALLY.

1. The fund for foreign intercourse is an annual fund placed at the disposal of the President to defray its expenses ; and he is limited in respect to an outfit only by the provision that it shall not exceed a year's salary. When the outfit has been paid, it is beyond the recall of the President or Congress.—(1 : 545.)

2. Compensation to a register or receiver of a land office for clerk hire is not legal, unless there shall have been an actual expenditure for clerk hire by them.—(2 : 84.)

3. Where the register or receiver performs the whole duty himself, his compensation is the fees given by the act of 1821, and the half per cent. given by the act of May 22, 1826.—(*Ibid.*)

4. The present surveyor of the city of Washington having been appointed by the Commissioner of Public Buildings, with the understanding that no salary was to be claimed, he is entitled to no part of the fund appropriated for the district.—(2 : 471.)

5. Where A. was employed to assist the district attorney of the District of Columbia, by the Mayor of Washington and the said attorney, in a prosecution then pending against a party for murder : *Held*, that he has a just claim against the government for compensation for his services.—(2 : 494.)

6. The militia of Missouri, Indiana, and Michigan, who were ordered out to repel Indian invasions by a competent State or territorial authority, are entitled to be paid for their services, provided the

circumstances under which the call was made were, in the opinion of the President, sufficient to justify it.—(2: 536.)

7. The amount of compensation, in all cases of militia service rendered during the late Indian hostilities on the frontiers, is limited to the time during which actual service was rendered; and the Secretary of War has no power to allow more.—(2: 547.)

8. The word compensation, as used in the act of 25th of January, 1828, which declares that compensation shall not be paid to any person in arrears to the United States, until, &c., is equivalent to the words "pay or salary," and does not include the "rations" nor "extra expenses," which are not pay proper.—(2: 593.)

9. If extra compensation to contractors shall have been paid by one Postmaster General, without the sanction of an act of Congress, the money so paid may be recovered back.—(3: 2.)

10. No allowance for horses or other property impressed into the service of the United States, nor for any special damage done to individuals or their property by the troops of the United States or the enemy, can be allowed by the first section of the act of 28th May, 1836.—(3: 162.)

11. This act does not extend to the pay and other allowances to be made to the militia or volunteers, which by the second section are placed on the same footing with those of militia and volunteers ordered into service by orders from the War Department. Of expenses incurred and supplies furnished, not of the like nature with those specially named in the abstract, only those are to be allowed which were known to the military service, having reference, in the cases both of expenses and supplies, to the character of each corps.—(*Ibid.*)

12. The owners of vessels chartered for the purpose of transporting Indians from Florida, but not employed for that purpose, are legally entitled to the stipulated demurrage and the actual damage occasioned by the non-fulfilment of the contract.—(3: 280.)

13. The compensation of teamsters, &c., in the Florida service, was not provided for in the act of 1819, providing pay for fatigue duty in the regular army, but has been provided for specially by Congress, and may be made to the volunteers selected for that service, with the approbation of the commanding general.—(3: 550.)

14. The sixth section of the act of 1789 provides that the compensation which shall be due to the members and officers of the Senate shall be certified by the President thereof, and the same shall be passed as public accounts and paid out of the treasury; and the certificate of the President, which is the presumed act of the Senate, is con-

clusive upon the matter as between that body and the accounting officers.—(3: 662.)

15. The legal appointment of a passed midshipman, under sentence of suspension and on half pay, to the office of lieutenant in the navy, is an implicit pardon of the sentence, and he is entitled to his pay as lieutenant from the date of his commission.—(4: 8.)

16. If the accounting officers are satisfied that a paymaster had authority to employ clerks to assist in paying the militia and volunteers, they may allow him a reasonable compensation for them, irrespective of the act of July 5, 1838.—(4: 94.)

17. The act of 1838 relates to clerks of paymasters paying the regular army, and not to the paying of militia and volunteers.—(*Ibid.*)

18. The Executive Department has no authority to give extra pay to the officers of the United States exploring expedition.—(4: 126, 128.)

19. The acts of 1835 and 1839 positively preclude extra payment to them unless a special appropriation therefor shall be made by Congress.—(*Ibid.*)

20. The act of March 3, 1839, which is a perpetual law applying to all branches of the public service, expressly forbids any person whose salary, pay, or emoluments is fixed by law to receive any extra allowance or compensation in any form whatever for the performance of any service, unless the same shall have been authorized by law; and whatever may have been the discretion vested in the Executive before, it was taken away by that act.—(4: 128.)

21. A person filling the offices of clerk of a circuit court and clerk of a district court is entitled, under the act of 1842, to the salaries of both offices.—(4: 145.)

22. The salaries attach to the offices for the services rendered in discharge of the duties thereof; and there is no law prohibiting the discharge of the duties of both offices by the same person.—(*Ibid.*),

23. In the absence of any statute regulation concerning the compensation of commissioners of circuit courts, the courts themselves may fix the rate. Where rates have not been fixed, the amount may be ascertained by a reference to the local law of the State providing for similar services by local magistrates.—(4: 233.)

24. Proceedings under the several acts of Congress before these commissioners in behalf of the United States are properly chargeable to the United States, and ought to be allowed and paid.—(*Ibid.*)

25. The appropriation act of June 27, 1846, provided that the com-

missioners to examine claims under the treaty with the Cherokees should continue in office for one year from the date of their appointment, and no longer; and the moneys appropriated by the act of March 3, 1847, to pay the expenses of the commissioner are applicable as well to the payment of the salaries as the incidental expenses of the board.—(4 : 577.)

26. The certificate of the presiding officer of the Senate is conclusive evidence in support of charges for the payment of mileage to Senators made by the secretary.—(5 : 191.)

27. Under the first section of the act of January 22, 1818, the secretary of the Senate is entitled to credit for payments made to Senators for mileage, whether the certificate of the presiding officer be conclusive or not.—(*Ibid.*)

28. The claims of mail contractors for one month's extra pay, in cases where their contracts have been annulled and the service discontinued, are to be decided by the Postmaster General, or by the Auditor of the Treasury for the Post Office Department, as prescribed by the 8th section of the act of July 2, 1836.—(5 : 246.)

29. The Postmaster General may obtain the opinion of the Attorney General on such claims, yet his decision is equally conclusive, whether it shall be in accordance with or against such opinion, where one has been obtained.—(*Ibid.*)

30. The compensation to be rendered under the contract with A. G. Sloo, for the transportation of the mail in steam-vessels, ought to be in proportion to the service performed and accepted, without regard to the number of steamships employed in that service, or that have been built under that contract.—(5 : 271.)

31. Inasmuch as Congress has appropriated the money and directed payment to be made for said service, payment, notwithstanding certain advances, should be made.—(*Ibid.*)

32. The refunding of the advances must be considered as deferred, and left to the future discretion of Congress.—(*Ibid.*)

33. The cavalry called into the service of the United States under the act of 6th February, 1812, are entitled to compensation for their horses killed in action, or otherwise lost without their fault or negligence.—(5 : 701.)

34. In the allowance of this right, the provisions of the act of May 12, 1796, ought to be considered as furnishing the rule of proof, as well as that of restriction in value.—(*Ibid.*)

35. The President has no authority to allow extra witness fees to a person who appeared as witness for the claimant in the reclamation of

a fugitive from service, examined before a United States commissioner in the State of Massachusetts.—(6: 356.)

36. The provision of the act of August 4, 1854, increasing the pay of the rank and file of the army, takes effect immediately.—(6: 665.)

37. The provision of the act of Congress of March 3, 1855, allowing additional compensation to Giddings on a mail contract, does not require payment to him individually unless due to him; it is additional on the contract only so far as performed.—(7: 617.)

38. That addition does not affect any previous contract with other parties on the same route; they are to be paid according to the general law.—(*Ibid.*)

II.—OF CIVIL OFFICERS OF THE GOVERNMENT.

1. Navy agents may be allowed \$2,000 a year over and above office rent, clerk hire, fuel, &c., under act 3d March, 1809.—(1: 188.)

2. Where double duties are the fruits of a compromise, in a case of forfeiture, the collector prosecuting is as much entitled to his moiety of them as he would have been to his moiety of the forfeiture which they represent.—(1: 259.)

3. Salaries of the governor and judges of Arkansas Territory did not commence until the 4th July, 1819, the Territory not having been organized before that time.—(1: 310.)

4. The fund for foreign intercourse is an annual fund placed at the disposal of the President to defray its expenses; and he is limited in respect to an outfit only by the provision that it shall not exceed a year's salary. When the outfit has been paid, it is beyond the recall of the President or Congress.—(1: 545.)

5. The President of the United States may advance to a minister going from this country to Chili such part of his salary as he shall deem necessary to the proper fulfilment of public engagements in respect to him.—(1: 620.)

6. The surveyor of Petersburg is entitled to the salary fixed by law, he having been duly commissioned as a surveyor, having been called on to perform, and having faithfully performed, the duties of the office, even though he did not reside there, no residence being prescribed in the commission.—(1: 686.)

7. The services of General Harrison in the campaign of the Wabash, in 1811, were not included in the duties of the governor of a Territory, and he is entitled to pay therefor, under the act of April 10, 1812.—(2: 22.)

8. Where the register or receiver of a land office performs the whole duty himself, his compensation is the fees given by the act of 1821, and the half per cent. given by the act of 22d May, 1826.—(2: 84.)

9. The President may, in his discretion, advance money to a minister going abroad over and above his outfit.—(2: 204.)

10. As there are no fees prescribed for attendance by district attorneys on State courts, they should receive a reasonable compensation for such service.—(2: 318.)

(See *District Attorneys*.)

11. The minister to Madrid is not entitled to charge for office rent, although similar charges have been allowed to our ministers to London and Paris, the same not being warranted by law, nor having been the usage of the government.—(2: 453.)

12. There is no act of Congress warranting the practice of the government in paying foreign ministers and consuls, to whom salaries are given, a quarter's salary after they have presented their letters of recall.—(2: 470.)

13. In the case of William M. Blackford, chargé d'affaires to Bogota, who was superseded in office whilst within the United States on leave of absence, and who, on settlement of his account with the Executive Department, asked to be credited the usual infit of three months' salary: *Held* that such infit cannot be properly allowed him without special authority from Congress.—(4: 443.)

14. It is the duty of the government to provide a way to make the salary and expenses of a minister abroad good to him at the capital of his residence.—(4: 506.)

15. If a minister be directed to draw on London for his salary and expenses, and there shall be a loss on the sale of his bills, it is the duty of the government to make such loss good to him; and Mr. Wise, the American minister at Rio, having suffered a loss on his bills thus drawn on London, is entitled to indemnity.—(*Ibid.*)

16. The fifth section of the act of 4th July, 1836, does not include the double rations heretofore allowed by the regulations. The word "compensation" is synonymous with "pay," and does not include rations.—(3: 152.)

17. The salaries of judicial and other officers appointed for the Territory of Michigan are to be paid until the State shall have been actually admitted into the Union by the proclamation of the President.—(3: 170.)

18. Extra compensation to persons entitled to salaries may be allowed only where money shall have been appropriated for the par-

ticular services, for the performance of which it is claimed as a compensation.—(3: 439.)

19. In a case of a general appropriation of a sum of money for the accomplishment of a particular object, no part of it can be paid to a person receiving an annual salary, unless the services rendered are directed to be paid for by the act; nor can payment for such services be made out of the contingent fund.—(*Ibid.*)

20. By the acquiescence of the government, and the construction given in several judicial decisions entitled to respect, the act of the 7th of May, 1822, in relation to the compensation of officers of the customs, is not deemed to work a repeal of the act of the 2d of March, 1799, in relation to the same subject.—(3: 449.)

21. Agents for paying pensions are entitled to have their necessary contingent expenses allowed, notwithstanding the act of April 20, 1836; as the prohibition of that act may be well satisfied by stopping payment of the two per centum commissions which had been theretofore allowed for disbursing pension moneys.—(3: 481.)

22. The same individual having been appointed, under the act of 30th of June, 1834, a superintendent of Indian emigration, at a stipulated salary, and afterwards a commissioner to negotiate a treaty with the Miamies, at a per diem compensation, can, under the 30th section of said act, receive but one compensation during the same period.—(3: 511.)

23. Where collectors, naval officers, and surveyors, are required by the Secretary of the Treasury to perform services which are unconnected with their official duties, the necessary expenses actually incurred in the performance of those extra duties may be allowed them.—(3: 563.)

24. The compensation of officers of the customs is to be regulated and graduated by the importations of the present (1840) year, the act of July 21, 1840, merely substituting the present for the year 1838.—(5: 587.)

25. The act of 3d of March, 1841, making appropriations for the civil and diplomatic expenses of the government for the year 1841, was intended to restrain the incomes or annual emoluments of the officers therein mentioned as such, from all sources whatever connected with the performance of the duties of their office, to the sums therein mentioned.—(5: 658.)

26. Whether the allowance for agency of marine hospitals, superintendence of light-houses, and certificates for wines and teas, are fairly included within the purview of the statute, depends on the

question whether these objects come within the sphere of the collector's duty.—(*Ibid.*)

27. The compensation of collectors, naval officers, and surveyors, depends on the amount received from the sources enumerated in the acts of 1822 and 1841, read together—to the maximum of \$4,000, \$3,000, and \$2,500, for commissions upon duties ; and to \$2,000 from the sources enumerated in the fifth section of the act of 1841 ; and is in each case dependent on the fund derived from such sources, respectively.—(4 : 261.)

28. Officers of the customs are not entitled to additional compensation under the provisions of the 3d section of the act of 7th July, 1838, the same having been rendered nugatory by the repeal of the act upon which it was based, and the enactment of another law upon the subject. Their compensation is fixed by the act of 1840, which contains new and different provisions.—(5 : 233.)

29. Navy agents employed to make purchases, or to perform any services for a department other than the Navy Department, are not entitled to extra compensation, unless compensation for the extra services is expressly authorized by law.—(3 : 588.)

30. The judge of the superior court at St. Augustine cannot be allowed extra compensation for examining and adjudging certain cases of claims, as there is no appropriation for the services, and no provision for their payment in the act requiring them.—(3 : 589.)

31. Under the proviso of the act of 3d March, 1841, relating to the compensation of clerks, attorneys, counsel, and marshals, in the district courts of the United States, those officers are required to ascertain, as far as practicable, whether all the fees, emoluments, and receipts of their office, as allowed under anterior laws, will make their entire compensation exceed the sum of \$1,500 per annum ; and if it be reasonably certain that they will, the officer must be confined in his charges to the rates of fees prescribed by the proviso. If they will not, or if the question be fairly doubtful, the old rule may be adhered to.—(3 : 627.)

32. So, it is therein provided that those officers shall receive the same fees that may be allowed by the laws of the State where such district courts are held to the clerks, &c., in the highest courts of the said State in which the like services are rendered ; but for services the like of which are not rendered in the "highest" court, his fees must be the same as are allowed in the highest court in which they are rendered.—(*Ibid.*)

33. Nor ought a clerk to be held responsible to the treasury for any

amount of his fees which he may have failed to collect after using ordinary diligence.—(*Ibid.*)

34. The person appointed Secretary of the Treasury *ad interim* has a claim upon the government for the usual, or, if there be no usual, for a reasonable compensation for his services in that capacity; but an appropriation is necessary.—(4: 122.)

35. Mileage fees to district marshals whilst in pursuit of a person for the purpose of service of process upon him have been passed at the department; and as it seems equitable, although not within a rigid construction of the law, it may be well to adhere to the practice.—(4: 168.)

36. A captain of the navy, appointed as chief of the Bureau of Construction, can only receive the salary fixed by the act of 1842; and not the pay of a captain on duty, under the act of 1835.—(4: 181.)

37. Extra compensation cannot be allowed an officer whose salary is fixed by law for the discharge of a public service; but travelling expenses may be.—(4: 372.)

38. The compensation of receivers of public moneys for lands, including the provision for clerk hire in their offices, is limited by the act of 20th of April, 1818, to five hundred dollars, and a commission of one per cent. on the moneys received by them, provided that the whole amount shall not exceed three thousand dollars.—(4: 467.)

39. The clerk hire is a charge upon the commissions, and cannot be allowed as an extra charge.—(*Ibid.*)

40. Nor is the register of the land office at Kalamazoo entitled to an extra allowance as compensation or reimbursement for money paid for clerk hire in his office. The claim is not on a better footing than that of the receiver.—(4: 472.)

41. The acting Secretary of State, or of any other department, is not entitled to the salary provided for the incumbent whilst the office is filled and the salary received by an incumbent duly nominated and appointed by the President and confirmed by the Senate.—(5: 74.)

42. If the duties of an office belong to an incumbent who receives the salary affixed to it, another officer performing those duties is prohibited from receiving therefor any compensation whatever.—(*Ibid.*)

43. Since the act of 1842, no officer whose pay is fixed by law or regulation is lawfully entitled to any additional pay, extra allowance, or compensation in any form whatever, for any other duty or service, unless the same shall be authorized by law, and the appropriation therefor explicitly set forth that it is for additional pay, or extra compensation.—(*Ibid.*)

44. A commissioner for the exploration and survey of the north-eastern boundary cannot be allowed extra compensation by the accounting officers, unless there shall be legislative action authorizing it.—(4 : 269.)

45. There is no law authorizing the payment of \$149 to the district attorney of Florida for defending land suits; such payment being prohibited by the general appropriation act of 1842, sec. 173.—(5 : 567.)

46. District attorneys are entitled to a fair compensation for extra official services performed at the request of the head of a department.—(5 : 577.)

47. The compensation allowed to pension agents by the second section of act of 20th February, 1847, does not extend to services rendered previous to the passage of the law.—(5 : 568.)

48. Territorial judges, absent from the Territory for a period of three months, can obtain their salaries only on certificate of the President that the absence was for good cause.—(6 : 57.)

49. Marshals are entitled to compensation for transporting witnesses in custody, though it be not mentioned by the statute, by analogy of the statute compensation for the transportation of criminals.—(6 : 58.)

50. The salary of the American commissioner commenced on his taking the oath of office; and he is entitled to the cost of transportation to and from London.—(6 : 65.)

51. The provisions of the act of 1853, regulating the fees of district attorneys of the United States, and prohibiting the receipt of any fees except such as are therein specified, do not necessarily apply to services of a district attorney in the courts of one of the States.—(6 : 299.)

52. Special fees for counsel in the business of any one of the departments are chargeable to the proper fund of such department, and not to the judiciary fund.—(*Ibid.*)

53. For the performance of a duty not enumerated in the act regulating the fees of district attorneys, they are entitled to compensation, either in the analogy of the fees fixed by that act, or at the discretion of the head of the department ordering the service.—(7 : 46.)

54. A district attorney may lawfully receive special compensation for extra official services in the pursuit and collection of public funds embezzled by a deputy postmaster.—(7 : 53.)

55. A district attorney of the United States in charge of a suit in the courts of the United States in his district, does not become entitled to extra compensation for service in the argument of said suit, by reason of his receiving instructions relating thereto from the Secretary of the Navy.—(7 : 84.)

56. The salary prescribed by existing law for all the present ministers resident, except one, is \$4,500 ; for that one, the minister to the Ottoman Porte, it is \$6,000 ; which latter sum is the general statute compensation of ministers resident in all cases save where the lower salary is expressly prescribed by particular act of Congress.—(7: 186.)

57. Although the appropriation act of the last session of Congress, in appropriating for the diplomatic service of the next fiscal year, provides in terms for envoys extraordinary only, still that appropriation is, by collation with express provision of previous laws, subject to draft for the compensation of diplomatic officers of whatever rank lawfully in office by appointment of the President.—(*Ibid.*)

58. The practice having grown up in Congress of late years to insert matters of general legislation, including allowances for private claims, the regulation of salaries, and many other objects, in the appropriations for the service of a future fiscal year, it becomes necessary now to disregard wholly the title and general tenor of such acts, and to scan and scrutinize each separate clause, and to construe each according to its own separate merits, and to give it immediate effect, if such be its natural signification.—(7: 303.)

59. Hence, where, in any such act, there is provision in general terms of the present tense, either for the addition to or the diminution of a salary, it takes effect from the approval of the act by the President.—(*Ibid.*)

60. The salaries of all judges of courts of the United States are due from the date of appointment ; but the party does not become entitled to draw pay until he has entered on the duties of his office, or at least taken his official oath ; for, until then, though under commission, he is not actually in office ; and in some cases, as that of the territorial judges of Oregon, Washington, Kansas, and Nebraska, salary, though due from date of appointment, cannot be drawn until the judge enters on duty in the Territory.—(*Ibid.*)

61. In the case of appointments and removals by the President, when the removal is not by direct discharge or an express vacating of the office by way of independent fact, but merely by the operation of a new commission or appointment, then the virtue of the old commission ceases only when notice of the new commission is given to the outgoing officer, either by the President, or by the new officer exhibiting his commission to the old one, or by other sufficient notice ; and the old officer continues to be entitled to compensation down to the time of his ceasing to perform the duties of his office.—(*Ibid.*)

62. Case of allowance to a commissioner for running the boundary

line between the United States and the Mexican republic, of expenses of his return to the place of his domicil at the time of appointment.—(7: 627.)

63. The fees of a marshal, for bringing in and returning and the intermediate commitment of prisoners or witnesses, in cases pending before the commissioner, are embraced in the per diem allowance made by the statute for attendance of the marshal and his deputies at the trial.—(7: 667.)

64. The same rule applies for the same service in cases pending in the circuit or district court.—(*Ibid.*)

65. A substitute, or vice-consul, left in charge of the consulate during the temporary absence of the consul, is to be compensated out of the statute emoluments of the office, subject to regulations of the department.—(7: 714.)

66. An acting consul, in charge of a consulate during actual vacancy of the consulate, is entitled to receive the statute compensation of the office.—(*Ibid.*)

III.—OF OFFICERS OF THE ARMY AND NAVY.

1. GENERALLY.

2. NON-COMMISSIONED OFFICERS.

1. The commanding officer at the navy yard is entitled to the pay and emoluments of a commodore, and therefore a house or apartments should be furnished him free of rent.—(1: 160.)

2. The act of 18th April, 1814, does not limit the right of the President to increase the pay of the officers and men belonging to the navy to the close of the war with Great Britain.—(1: 192.)

3. The pay of a purser stops with the acceptance of his resignation, subject to the settlement of his accounts; the condition of the acceptance only keeping the office alive for the purposes of a settlement, and not for accruing compensation.—(1: 346.)

4. The allowance of fuel and quarters to officers of the army is founded on a regulation of the Department of War, sanctioned by an appropriation by Congress. The surgeon general is entitled to the same allowance.—(1: 475.)

5. Generals Gaines and Scott being major generals by brevet, and brevets being recognized in the act of July 6, 1812, which has been

continued in practice since the peace, and having commands according to their brevet rank, are entitled to the pay of major general.—(1: 525.)

6. Whether General Macomb is entitled to the brevet pay of brigadier general depends upon his having a command according to his brevet rank. But what a command according to brevet rank is, the law does not decide; the same is left to be determined by the regulations of the army.—(1: 547.)

7. The opinion of the Attorney General of the 29th December, 1821, was founded on the act of the 16th of April, 1818, and the army order of the 8th of May following, based thereon and giving construction to it. The repeal of the section of the act of 2d March, 1821, which sustains the army order, removes one of the grounds upon which it was suggested that they were in command of divisions, and leaves the fact to be settled by the Department of War.—(1: 564.)

8. If Generals Gaines and Scott are in command of divisions, according to the arrangement of troops on the peace establishment, they are, nevertheless, by force of the act of the 16th April, 1818, entitled to the pay and emoluments of their brevet rank.—(*Ibid.*)

9. The number of guns at which a ship-of-war is rated is the standard for the regulation of the pay of her officers, under the acts of Congress. The number of guns a ship may actually mount is variable, and increases or diminishes with the particular service in which she may be employed.—(1: 606.)

10. The act of 25th February, 1799, does not contemplate the case of a master commandant commanding a vessel of twenty guns; such being required to be under the command of captains.—(*Ibid.*)

11. A judge advocate is entitled to compensation for extra expenses in travelling and sitting as judge advocate, and to special compensation for clerical services, under the 21st and 22d sections of the act of 16th March, 1802.—(1: 618.)

12. The term "major" in the provision of the act (24th April, 1806) regulating the pay of battalion and regimental paymasters, and providing that they shall receive the pay and emoluments of a major, may be taken to mean a major of infantry.—(1: 704.)

13. The per diem allowance made to officers for travelling expenses by act of 16th March, 1802, is confined to officers travelling to and from courts-martial, and cannot be paid to those who are travelling on other business.—(1: 708.)

14. By the act of 21st April, 1806, touching the pay of certain officers retained in service, it is provided that they shall receive no

more than half of their monthly pay when they are not under orders for actual service.—(2 : 18.)

15. A lieutenant, being a subaltern in the army, and not in the performance of any staff duty, is entitled, by the act of 2d March, 1827, to an additional ration.—(2 : 213.)

16. Where the acts of Congress designate the compensation of officers of staff by a reference to the pay and emoluments of any specified rank in the line of the army, they must be taken to refer to the infantry, unless otherwise expressed.—(2 : 220.)

17. The act of 1818 allows pay to brevetted officers having commands according to their brevet rank ; but the order of the Secretary of War provides that they shall have a command equal to double their ordinary or regimental command, which order conflicts with the act, and is, therefore, of doubtful validity.—(2 : 223.)

18. Brevet pay must, nevertheless, be limited to those “who are on duty and have a command according to their brevet rank,” according to the language of the act, and cannot legally be extended to those whose command is double that which their regimental rank authorizes, but which is at the same time not according to that to which their brevet rank entitles them.—(*Ibid.*)

19. Extra rations are properly issuable to officers commanding at posts, in the ordinary military acceptation of that term, and to those to whom, by special order of the President, they have been or may be directed to be issued.—(*Ibid.*)

20. Both the surgeon general and paymaster general are entitled equally to allowances for fuel and quarters.—(*Ibid.*)

21. Such allowances as are actually necessary for the marine corps, although unauthorized by any act having express relation to that corps, may be made, by considering the acts authorizing them to officers of the army as extending to the marine corps, wherever the analogy is complete.—(*Ibid.*)

22. A surgeon in the navy who resigned in 1824, and was re-appointed in April, 1827, is not entitled to the benefits of the act of May 24, 1828, though his case may be included within the amendatory act of 1829.—(2 : 273.)

23. Where Congress fails to provide for disbursements indispensable to the performance of the naval service, the President may make allowances to officers acting in higher stations than those to which they were appointed by their warrants or commissions.—(2 : 284.)

24. A general officer of the army cannot draw a back allowance for

fuel and quarters who, during the time for which he seeks such allowance, received double rations in lieu thereof.—(2: 303.)

25. Public debtors in the naval service of the United States are entitled to receive the rations allowed them by law, or the amount in money for which they may be commuted, notwithstanding the act of 25th January, 1828.—(2: 420.)

26. The half pay allowed to officers by act of 1832, July 5, cannot be given when the officer accepts the substitute of commutation.—(2: 555.)

27. The members of the board of navy commissioners having been provided with salaries, in lieu of rations, and not having hitherto received rations, a tacit construction against the right to rations has been given by the department.—(2: 557.)

28. Whenever an act of Congress has, by actual decision, or by continued usage or practice, received a construction at the proper department, and that construction has been acted on for a succession of years, it must be a strong and palpable case of error and injustice to justify a change in the interpretation to be given it.—(*Ibid.*)

29. The chief of the corps of engineers is not entitled to one dollar and twenty-five cents per day for bureau duty, under the construction, long acquiesced in, given to the regulations by the department.—(2: 560.)

30. The commissions given to the district paymasters of the army of the United States, employed in making payments to the militia ordered into the service of the United States during the preceding year, are to be calculated only upon the sums respectively paid by them in the performance of their duty. They are not to be calculated upon moneys received and paid over to other public officers also acting as paymasters and agents of the government —(2: 621.)

31. Lieutenants in the receipt of extra pay for staff duties were not affected by the law of 1827, and are entitled to only three rations per day when in the performance of ordinary duties, and six when in command of a post with a right to double rations.—(2: 638.)

32. A brevet major, whilst in command, according to his brevet rank, of a fort, being detailed to sit as major on a court-martial, is entitled to his brevet pay for the period employed on the court, provided it shall be found that, according to military usage, he was at the same time in command of the fort.—(2: 646.)

33. The design of the proviso limiting the compensation of officers of the army, contained in the act of 3d March, 1835, was to prohibit the payment of any percentage, additional pay, extra allowance, or

extra compensation to them, not only on account of the disbursing of public moneys appropriated during the last session of Congress for any of the purposes specially enumerated, but also to prohibit any such allowance for any other duty or service whatsoever, unless authorized by law.—(2: 701.)

34. Officers of the army acting as Indian agents, who shall be employed in the removal of Indians, may, notwithstanding said act, be allowed their actual travelling expenses.—(*Ibid.*)

35. Certain acts of Congress, when construed together, authorize the continuance of allowances for quarters, fuel, and transportation, agreeably to estimates and the former usage.—(*Ibid.*)

36. The practice of commuting for quarters and fuel is only a particular mode of ascertaining the amount of the proper allowances for these objects, adopted from a regard to convenience and economy; and, as it is still authorized by law, there is no objection to the continuance of this method of settling it.—(*Ibid.*)

37. According to the regulations in force at the time, the duties performed by Captain Delafield were so far extra as to entitle him to the special compensation provided for by those regulations, not exceeding two and a half per cent. on all the moneys disbursed by him.—(2: 705.)

38. Field officers, captains, and subalterns, who commanded in the battalions of Virginia on the continental establishment, or who served in the battalions raised for the immediate defence of the State or of the United States, and all such officers as became supernumerary on the reduction of any of said battalions, and who again entered the service when required, in the same or any higher rank, and continued therein until the end of the war, were entitled to half pay under the laws of that State, although not residents of Virginia; so also were the naval officers of the like rank.—(3: 37.)

39. A lieutenant colonel is entitled to receive a reasonable compensation for the services performed and the expenses incurred by him for superintending the Springfield armory, whilst he was in command of the Watervliet arsenal; but not as superintendent of said armory, whilst there was a regular superintendent in office.—(3: 50.)

40. In order to entitle a captain to the annual pay of four thousand dollars per annum given by the act of 3d March, 1835, he must be in actual command of a squadron on a foreign station.—(3: 81.)

41. To entitle a brevet brigadier general to pay according to his brevet rank, he must be in command of a brigade regularly consisting of two regiments.—(3: 83.)

42. Officers of ordnance department are excluded from the benefits of their brevet rank by the act of 16th April, 1818.—(3 : 83.)

43. The extra compensation and allowances given by the regulations in force at the time of the passage of the act of the 3d of March, 1835, were authorized by law.—(3 : 84.)

44. The 8th section of the act of 2d March, 1821, was enacted as a permanent provision ; and, as it has never been repealed nor abrogated, is yet in force.—(*Ibid.*)

45. The payment of army contingencies is authorized by law ; and, as Congress has not defined in the law itself what those contingencies are, the Secretary of War must be admitted to possess a very liberal discretion on the subject.—(*Ibid.*)

46. If allowances made by the Secretary of War prior to the 3d March, 1835, to officers of the army, from the appropriation for army contingencies, were really for contingencies, they were authorized by law.—(*Ibid.*)

47. Promoted officers of the navy, whose commissions fix dates of rank anterior to the dates of the commissions, are entitled to the increased pay from the date to which their appointments were carried back, provided they were intermediately in the performance of duties compatible with the grade to which they were elevated by their promotions.—(3 : 124.)

48. Captains of volunteers or militia embraced in the act of the 19th March, 1836, who performed any duty, or were charged with any responsibility, with respect to the clothing, arms, or accoutrements, or with respect to either of these articles, belonging to their companies, are entitled to the additional compensation of ten dollars per month allowed to captains of the army for their duties in respect to clothing, &c., by the act of 2d March, 1827.—(3 : 136.)

49. The proviso of the act of 3d March, 1835, prohibiting the payment of percentage to officers of the army for any service or duty, unless authorized by law, is a permanent provision, and cannot be avoided except by an express enactment ; wherefore a commission cannot now be allowed to a paymaster on moneys paid out by him to the militia and volunteers serving in Florida.—(3 : 153.)

50. The acting quartermaster general is entitled to receive the pay and emoluments of quartermaster general during the period of his service in that capacity, where the office is really or effectually vacant.—(3 : 261.)

51. The proviso of the 5th section of the act of 4th July, 1836, to

authorize the appointment of additional paymasters, and for other purposes, does not seem to defeat the present claim.—(*Ibid.*)

52. By the application of the act of 2d March, 1827, to the marine corps, an assistant quartermaster of marines was entitled prior to the 30th June, 1834, to all the extra pay and emoluments allowed to an assistant quartermaster in the army similarly situated.—(3 : 265.)

53. A captain or subaltern in the command of a detachment of marines is entitled to receive the ten dollars per month, as provided by the said act for the officer commanding a company in the army.—(*Ibid.*)

54. The assistant surgeon is entitled to the pay of a surgeon whenever he is called to discharge the peculiar duties of a surgeon ; but those duties must be such as can only be performed by him when present.—(3 : 308.)

55. An officer exercising a command in a corps of militia or volunteers in the actual service of the United States higher in grade than his rank in the army, is equitably entitled to the pay and emoluments of the grade in which he serves.—(3 : 323.)

56. An officer who, in point of fact, temporarily performs the duties belonging to an office of higher grade, is entitled to the compensation allowed to such higher grade, even though his appointment may not have conformed in all respects to the requirements of the regulations.—(3 : 337.)

57. A captain, entitled to keep three horses only, can only draw forage in kind, or claim an equivalent in money, for that number ; and if he draw for horses belonging to the United States, it must be deducted from that number.—(3 : 340.)

58. An officer in the actual command of any number of men sufficiently large to constitute a detachment of marines, according to the usage of the Navy Department, will be entitled to the allowance given in the 2d section of the act of March 2, 1827.—(3 : 342.)

59. An assistant surgeon appointed Surgeon General *ad interim*, and discharging at the same time the duties of both offices, is entitled to the pay of both, unless the functions of the former were merged in the latter, or suspended by the performance of such other duties as to make it legally improper or actually impossible for him to execute the functions of assistant.—(3 : 363.)

60. The claim of General Scott for a compensation of eight dollars per day over and above his regular pay as major general, for superintending the removal of the Cherokees under the direction o

the Secretary of War, cannot be allowed without violating the proviso to the act of March 3, 1855.—(3 : 395.)

61. Nor though he were a special commissioner to effect that object.—(3 : 416)

62. Since March 3, 1835, quartermasters have not been allowed any extra compensation on account of disbursements for public supplies.—(3 : 516.)

63. Company officers only are entitled to the forty cents a day provided by the 2d section of the act of March 19, 1836.—(3 : 566.)

64. A lieutenant having written a letter to the Secretary of War, which, though not intended as such, was considered a resignation by that department, and the lieutenant was accordingly dropped from the rolls, but afterwards restored by the President to his station and rank, is entitled to be paid as lieutenant during the time he was kept out of service.—(3 : 641.)

65. The construction put upon the act of 1835, allowing ten cents a mile to naval officers who may be required to travel upon the public service, confining such allowance to travelling in this country, regarded as *res judicata*; yet it is an interpolation not exactly warranted by the letter of the statute.—(4 : 95.)

66. The rendering of “may” for “shall,” and the “ten cents” per mile treated as the maximum only, &c., recommended.—(*Ibid.*)

67. The Executive has no authority for allowing extra compensation to the officers at West Point, the same not being authorized by any law.—(4 : 138.)

68. The service of pursers must be continuous under the same commission, to entitle the into the progressive rise in pay and rations prescribed by the act of August 20, 1842.—(4 : 215.)

69. Lieutenant Wilkes, who commanded the Exploring Expedition, does not come within the provisions of the appropriation act of March 3, 1843, and is not entitled to such a rate of extra pay as will make his annual compensation equal to that of the Superintendent of the Coast Survey.—(4 : 235.)

70. The act only authorized the accounting officers to allow and credit with extra pay those officers who were employed in scientific duties in the late surveying and exploring expedition to the Pacific Ocean and South Seas.—(*Ibid.*)

71. The only extra compensation justly claimable by him is such as was allowed to officers of the navy, of equal grade with those employed in the coast survey.—(*Ibid.*)

72. Under no circumstances can a subaltern claim the additional

ration given by the act of 1827, whether as commanding officer or otherwise, whilst receiving compensation for the performance of staff duties.—(4: 305.)

73. The effect of a sentence of a court-martial suspending for three years upon half pay a lieutenant of the marine corps, and ordering a reprimand by the Secretary of the Navy, is to suspend half the officer's pay from the date of the confirmation of the sentence forward during the term of three years. Until the confirmation, he is entitled to receive full pay, as before trial. The authority of a naval court-martial to affect by its sentence the pay of an officer subject to its jurisdiction is conferred by the act of April 23, 1800.—(4: 323.)

74. The provision that officers or persons in public employ, whose salaries are fixed by law, cannot receive any additional allowance except for travelling for the performance of duties at a distance from their stations or domicils, applies to the officers of the navy as well as to other public officers.—(4: 342.)

75. It is doubtful if a case can be presented in which an officer, whose salary is fixed by law, can be entitled to an extra compensation for the discharge of a public service.—(*Ibid.*)

76. The purser attached to the war steamer Missouri is entitled to the same rate of compensation as pursers of frigates of the same rate.—(4: 387.)

77. War steamers of the tonnage, spars, rigging, and armament of frigates, and rated as such by the department, may be regarded as frigates, for the purpose of determining the compensation to which the pursers thereof are entitled.—(*Ibid.*)

78. If, however, it be found that this construction of the law produces any embarrassment in the outfit or allowances of steam vessels, it may be obviated by a regulation arranging all the vessels-of-war using steam power into two classes.—(*Ibid.*)

79. Paymasters, surgeons, and assistant surgeons are entitled, under the act of March 2, 1845, to forage for one horse each only, as they are not general field officers, nor officers of dragoons, but are within the denomination of "other officers entitled to forage" specified in the said act.—(4: 415.)

80. Major Ripley is entitled to payment of his account for extra services in superintending the Springfield armory, as such superintendence was in addition to his appropriate duties, and as an appropriation was made by Congress to satisfy it, which no other person could receive.—4: 522.)

81. The act of May 19, 1846, for raising a regiment of mounted

riflemen, treated the regiment thereby created as a body of mounted men, and gave them the pay and emoluments of dragoons.—(4: 535.)

82. A surgeon in the navy, who was dismissed from the service by the President in 1829, and renominated and confirmed, with the condition that such appointment should take effect from the date of the ineffectual confirmation; and who was again, in 1842, renominated to the same office, to take rank from the date of his original commission, is not entitled to back pay for the time intervening between his dismissal and his restoration.—(4: 603.)

83. An antedated commission, when issued for the purpose of restoring an officer out of service to the rank which he would have held had he remained in it, does not carry with it the right to pay for services not only unperformed, but which he was incompetent to perform.—(*Ibid.*)

84. The professors of the Military Academy, and the commandant of the corps of cadets at West Point, are entitled to forage, or money in lieu thereof, for only one horse each in time of peace, and that is required to be owned by them respectively, and actually kept in service.—(5: 1.)

85. Major Craig is entitled to extra compensation for his services as superintendent of the armory at Harper's Ferry, Congress having made an appropriation therefor, which no other person is entitled to receive.—(5: 61.)

86. The act March 3, 1847, regulating the pay of lieutenants holding the appointment of adjutant or regimental quartermaster, &c., is to be regarded as prospective in its operation.—(5: 72.)

87. The marine officers who were reduced under section 4 of the act of March 2, 1847, and restored under the naval appropriation act subsequently passed, are not entitled to pay during the interval.—(5: 101.)

88. A second lieutenant, who was dismissed from the service on December 1, 1842, and recommissioned on April 20, 1843, to take rank from date of his original appointment, is not entitled to pay during the time he was out of the service.—(5: 132.)

89. Pay is never to be allowed to officers except whilst they are in service, unless pursuant to some act of Congress providing for the particular case.—(*Ibid.*)

90. The relatives of a deceased officer or soldier are not entitled, under the act of July 19, 1848, to receive three months' extra pay on account of services of the ancestor, unless the ancestor were thus entitled at his demise.—(5: 168.)

91. The claim of the administrators of Commodore James Barron, commander of the State navy of Virginia during the war of the revolution, for commutation pay and interest, should be allowed.—(5 : 226.) But see *contra*, 5 : 365.

92. The additional compensation of paymasters employed in the payment of volunteers during the late war with Mexico, authorized by the act of August 12, 1848, may be continued up to the time of the payment of the volunteers who returned home unpaid at the end of the war.—(5 : 362.)

93. Lieutenants commanding naval steamships, built for the transportation of mails under act of March 3, 1847, are in the service of the United States, and entitled to a salary of \$1,800 per annum, as lieutenants commanding in the navy.—(5 : 404.)

94. Regimental quartermasters of the dragoons, artillery, infantry, and riflemen, respectively, are entitled to forage for two horses, by section 4th of the act 11th February, 1847.—(5 : 406.)

95. Brevet officers of the marine corps are entitled to the same pay and emoluments which are allowed to officers of similar grades in the infantry of the army.—(5 : 513.)

96. Officers of the army, who, during the war with Mexico, aided in the collection of export and import duties at the ports, and in the interior of Mexico, may *retain* for their services so much of the amounts received as, in the opinion of the President, is a fair compensation.—(5 : 521.)

97. By the remedial act of March 3, 1843, Lieutenant Wilkes, as superintendent of the Exploring Expedition to the Pacific ocean and South seas, is entitled to an extra compensation, equal to the pay allowed the Superintendent of the Coast Survey, for the period from March 23, 1838, to June 22, 1842.—(5 : 591.)

98. Under the act of April 21, 1806, a suspended naval officer can receive only half pay.—(5 : 739.)

99. By successive acts of Congress, engineers and certain other officers of the navy are to be examined for promotion, and if one of them be absent on duty at the time of the examination of his class, he shall, when examined and passed, take rank with the rest, as if examined at the same time : *Held*, that retroactive pay does not as of course follow the ascription of retroactive rank.—(6 : 68.)

100. The salary of the Chief of the Bureau of Construction in the Navy Department, as such, is three thousand dollars, though three thousand five hundred dollars is allowable to a captain of the navy

when he holds the office, the latter sum being provided in this case only as a limitation of his pay in the navy.—(6 : 169.)

101. A sentence of suspension merely, by a naval court-martial, does not deprive the party of pay and emoluments.—(6 : 200.)

102. Brevet Major General Smith, assigned to the command of the eighth military department, was temporarily absent therefrom, under orders from the general-in-chief, for the purpose of consultation upon matters connected with his command, during which time Brevet Brigadier General Harney was ordered to the temporary command of the same department: *Held*, that Brevet Major General Smith and Brevet Brigadier General Harney were each entitled, for the time, to the pay and emoluments according to their brevet ranks, each being in command and on duty in such rank.—(6 : 211.)

103. The time when the increased pay allowed by act of Congress to Lieutenant Gillis, as Superintendent of the Astronomical Expedition to Chil , shall cease, not being definitely prescribed by act of Congress, depends on the discretion of the Secretary of the Navy.—(6 : 220.)

104. An officer of the navy becoming disabled from service, but not in the line of his duty, was permitted to retain his commission as an officer not under orders for actual service, and received, as such, half pay during twenty-seven years of total disability: *Held*, that the sum thus allowed is the utmost which could be lawfully paid to the party, and that his administrator has no right to demand arrears of full pay in the case.—(6 : 372.)

105. The phrase “who served in the Pacific ocean, on the coast of California and Mexico,” in a statute of 1850, for the benefit of the navy and marine corps, having received a particular construction: *Held*, that the same words, afterwards repeated in a statute of 1853, on the same subject, must receive the same construction.—(7 : 299.)

106. Congress, on the 18th of May, 1798, passed an act, entitled “An act authorizing the President of the United States to raise a provisional army,” the fifth section of which is in the following words:

“*And be it further enacted*, That whenever the President shall deem it expedient, he is hereby empowered to appoint, by and with the advice and consent of the Senate, a commander of the army which may be raised by virtue of this act, and who, being commissioned as lieutenant general, may be authorized to command the armies of the United States, and shall be entitled to the following pay and emoluments, viz: two hundred and fifty dollars monthly pay, fifty dollars monthly

allowance for forage, when the same shall not be provided by the United States, and forty rations per day, or money in lieu thereof, at the current price; who shall have authority to appoint, from time to time, such number of aids, not exceeding four, and secretaries not exceeding two, as he may judge proper, each to have the rank, pay, and emoluments of a lieutenant colonel.”—(1 Stat. at Large, pp. 558–559.)

Congress, on the 15th of February, 1855, passed in the following words:

“A resolution authorizing the President of the United States to confer the title of lieutenant general by brevet, for eminent services.

“*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That the grade of lieutenant general be, and the same is hereby, revived in the army of the United States, in order that when, in the opinion of the President and Senate, it shall be deemed proper to acknowledge eminent services of a major general of the army in the late war with Mexico, in the mode already provided for in subordinate grades, the grade of lieutenant general may be specially conferred by brevet, and by brevet only, to take rank from the date of such service or services: *Provided, however*, That when the said grade of lieutenant general by brevet shall have once been filled, and have become vacant, this joint resolution shall thereafter expire and be of no effect.”

Thereupon, the President of the United States nominated General Scott to the Senate to be lieutenant general by brevet, he was confirmed as such, and commissioned as such.

And, upon the question, Whether there is now in force any law fixing the pay and allowances of the grade of lieutenant general, it was

Held: That the provisions of the fifth section of the act of May 28, 1798, have been repealed, in so far as regards the office which it created, by subsequent statutes, and especially, if by no other effectually and finally, yet certainly by that of March 2, 1821.—(7: 399.)

107. It does not clearly appear that the provisions of the fifth section of the act of May 28, 1798, as to the pay of the grade of lieutenant general, had been repealed, either expressly or tacitly, by any subsequent act, and the same is probably to be regarded as having remained in abeyance, capable of renewed legal efficacy, if that rank should at any time be re-established, without additional legislation as to its pay and emoluments.—(*Ibid.*)

108. The enactment in the joint resolution that the “grade” of lieutenant general be “revived” does not have the consequential effect

in law to revive the statute as such, provided the same had previously been repealed.—(*Ibid.*)

109. But, when a statute revives a statute grade or office, it is to be intended, if nothing to the contrary appear, that the statute provision as to pay and emoluments previously annexed to the grade or office, is by legal consequence revived, whether that provision of the statute had or not been repealed.—(*Ibid.*)

110. Hence, the joint resolution must receive one or the other of these alternative constructions: Either, first, it intends that the pre-existing provision of statute, which fixed the pay of the grade of lieutenant general, had never been repealed, that the law on that subject was dormant, awaiting the existence of an office and a person to which and to whom it should become applicable, the office being supplied by the resolution, and the person by his appointment to the office; or, secondly, it intends, assuming that the statute office of lieutenant general, with its pay and emoluments, once existed, but had been repealed or had fallen into desuetude, to revive that statute office, for this occasion, and in so doing to resuscitate the statute pay and emoluments of the office; and, therefore, there is now in force a law in the fifth section of the act of May 28, 1798, fixing the pay of the grade of lieutenant general.—(*Ibid.*)

111. Construction of the act of February 8, 1855, in respect of the pay of officers of the navy promoted into vacancies occasioned by the retirement of their senior officers under that act.—(7: 640.)

112. The officers of the army constituting the staff of General Scott while in command of the army, do not become entitled to increase of rank and pay or emoluments in virtue of the law authorizing the revival of the grade of lieutenant general and its bestowment by brevet on a major general.—(7: 709.)

2. NON-COMMISSIONED OFFICERS.

1. A midshipman, nominated and confirmed by the Senate to take rank next after Lieutenant P., who holds a commission, dated January, 1825, cannot draw the pay of a lieutenant until he receives his lieutenant's commission.—(2: 27.)

2. Sergeants of the army, employed as assistant clerks in the bureaus of the War Department, are entitled to the additional compensation of fifteen cents per day, allowed by the act of March 2, 1819.—(2: 707.)

3. A quartermaster sergeant, acting as a clerk in the office of the quartermaster of the marine corps, is entitled to the additional compensation of fifteen cents per day, allowed by the act of March 2, 1819,

and paid to the sergeant acting as clerk in the office of the Quartermaster General of the army.—(3: 116.)

4. A dismissed midshipman, restored to service from the date of dismissal, is not entitled to pay whilst out of the service, and not legally competent to perform duty by reason of permanent suspension.—(4: 318.)

IV.—OF EMPLOYÉS OF THE GOVERNMENT.

• 1. No higher allowance can be made to clerks employed in the Patent Office than is authorized by the act of 20th April, 1818.—(2: 455.)

2. By the act of 20th April, 1818, the number and compensation of the clerks to be employed by the navy commissioners is fixed; and the same law provides that no higher or other allowance shall be made to any clerk in the departments and offices than is therein authorized. Wherefore, such of the clerks as have been overpaid should refund the excess to the treasury.—(2: 582.)

3. It is improper to allow salaries to clerks absent from the country and not actually employed in the duties of the office.—(*Ibid.*)

4. The sanction of the navy commissioners to the excessive salaries erroneously given does not give the clerks who have received the excess a right to retain it.—(*Ibid.*)

5. Where the navy commissioners had employed a clerk at a stipulated sum, less than the maximum allowed by the act of 1818, and the difference between the maximum and the amount actually paid was drawn in his name and paid over to other persons, who have since been required to refund it to the treasury, and the said clerk comes forward to demand it: *Held*, that he has no claim to the moneys thus refunded.—(2: 591.)

6. Sergeants of the army, employed as assistant clerks in the bureaus of the War Department, are entitled to the additional compensation of fifteen cents per day, allowed by the act of 2d March, 1819.—(2: 706.)

7. In case the public service shall demand it, the commandant of the marine corps may employ a clerk in his office who shall not be of the corps; yet it is doubtful, perhaps, whether any part of the appropriation made for pay and subsistence can be paid any person not an integral part of the corps.—(2: 707.)

8. A quartermaster sergeant, acting as clerk in the office of the quartermaster of the marine corps, is entitled to the additional com-

pensation of fifteen cents per day, allowed by the act of 2d March, 1819, and paid to the sergeant acting as clerk in the office of the Quartermaster General of the army.—(3 : 116.)

9. The clerks and messengers of the Pension Office, authorized by the act of 9th May, 1836, are entitled to the increase of salaries provided by the enacting clause of the third section of the act of 3d March, 1837.—(3 : 181.)

10. The salaries of three clerks only in the General Land Office were fixed in the act reorganizing it. All the residue, including the messengers, are entitled to the percentage granted by the act of 3d March, 1837.—(3 : 193.)

11. There is no provision of law which authorizes the employment of persons for clerks to paymasters other than non-commissioned officers ; yet the department, in the exercise of its general powers, may allow a private citizen to be employed when no capable non-commissioned officer can be obtained.—(3 : 242.)

12. The department may take the highest pay, allowed by the laws now in force, to any non-commissioned officer of the corps to which the person employed as paymaster's clerk belongs, as the standard of compensation, and may allow him double the same.—(*Ibid.*)

13. The clerk of the navy and privateer pension and navy hospital funds is entitled, over and above his salary, to a fair compensation for services performed by him in respect to the United States coast survey, as those services were no part of his official duty.—(3 : 245.)

14. Clerks, whose ordinary duties are prescribed by law, or by the head of the bureau in which they are employed under the authority of law, who perform services additional to those which are in their line of ordinary duty, are equitably entitled to a just compensation therefor.—(3 : 324.)

15. Clerks in the Fourth Auditor's office are entitled to a fair compensation for services performed by them in relation to the navy pension and navy hospital funds, provided those services are not within the range of the powers and duties assigned by law to the office of the Fourth Auditor.—(3 : 329.)

16. The secretary of the commander of the surveying and exploring expedition has no legal right to compensation for services rendered anterior to the appointment of the commander and the receipt of formal notice of his appointment as secretary ; yet if he actually rendered services in respect to that expedition before, and, in the judgment of the President, has an equitable claim, he may be paid out

of the appropriation of 1836, for the expedition, without sending the claim to Congress.—(3: 357.)

17. Clerks and others holding regular appointments to places created, and receiving specific salaries, affixed thereto by law, are not entitled to additional allowances for services rendered the government as the agent for surveying and selling Indian lands, the same being prohibited by acts of Congress.—(3: 422.)

18. The chief messenger in the Treasury Department is not entitled to compensation over and above his salary for carrying the mails of the several offices occupying the southeast executive building to and from the post office; but if he be required to furnish a horse for that duty, a reasonable compensation for that should be allowed.—(3: 473.)

19. Nor are watchmen entitled to extra compensation for labor performed in the offices during the day.—(*Ibid.*)

20. All such claims for compensation come within the prohibitions of the 3d section of the act of Congress of March 3, 1839, upon which the views of the Attorney General have been given.—(*Ibid.*)

21. Clerks in the War Department are not entitled to extra compensation for attending to the business connected with the reservations under the Creek treaty of March 24, 1832.—(3: 621.)

22. The word "rate" of compensation, as the same is employed in the act and resolution of 1812, to define the compensation of the superintending clerk of the census, construed to mean *the sum paid*; and a claim for a greater amount, on the ground of an increase of typographical matter, rejected.—(4: 3.)

23. The act of 1799, giving authority to collectors to employ occasional inspectors and others in aid of the revenue, did not authorize them to employ persons to perform clerical duties in custom-houses, and to pay them out of the revenue.—(4: 230.)

24. The expense of clerk hire in the custom-houses cannot be charged upon the treasury, except in the cases provided for by the act of 1838.—(*Ibid.*)

25. The act 7th July, 1838, does not change the aspect of the case of clerks as provided by act 7th May, 1822, its object only being to allow them, to a certain extent, the fees and emoluments which, but for the operation of the acts of 1832 and 1833, they would have received, and limiting allowances according to the importations of the year.—(*Ibid.*)

26. Collectors of customs, acting as superintendents of light-houses, are entitled to commissions upon disbursements made by them in that

capacity, subject to the limitation imposed by the 18th section of the act 7th May, 1822.—(4: 249.)

27. Where an officer of the general government employs an auctioneer of a Territory to make sales therein which such officer was required himself to make, such auctioneer has the right to the percentage which the laws of the Territory allow him to retain.—(4: 257.)

28. Collectors of customs, who are made superintendents of light-houses, may receive commissions on their disbursements.—(4: 272.)

29. The chief clerks of the bureaus of Yards and Docks, and of Construction, Equipment and Repair, are entitled to the pay of the chiefs of those bureaus whilst acting as such under the authority of the President; but they cannot receive the pay of chiefs and clerks at the same time.—(4: 320.)

30. A clerk in the Pension Office ordered to perform the duties of secretary to commissioners appointed to treat with a delegation of Indians is not entitled to extra compensation therefor, but must be limited to the compensation provided by law for his services as a clerk in the Pension Office.—(4: 463.)

31. A professor of mathematics in the navy, who may have been required to perform certain duties at the depot of charts and nautical instruments, and who at the time was superintendent of meteorological observations by appointment of the Secretary of War at a salary of \$2,000, is not entitled at the same time to the salary of a professor of mathematics under the act of 3d March, 1835.—(5: 250.)

32. The salary provided by the act of 3d March, 1835, is due only to professors when attached to vessels for sea service, or in a yard.—(*Ibid.*)

33. But he is entitled to a reasonable compensation over and above his salary in the War Department, for services performed in the depot of charts and nautical instruments.—(*Ibid.*)

34. The Secretary of the Interior has authority to increase the salary or compensation of the clerks employed in the Census office, provided that such increase does not raise their salaries above the compensation usually paid for similar services, nor above the sum of one thousand dollars per annum.—(5: 295.)

35. These restrictions and limitations are explicit and peremptory; but subject to them the power of the Secretary is discretionary.—(*Ibid.*)

36. The increased compensation allowed by the act of 16th Septem-

ber, 1850, to certain professors and teachers at the Military Academy, commenced with the fiscal year ending 30th June, 1851.—(5: 317.)

37. The Secretary of the Treasury may appoint a person as clerk to aid in the supervision of the coast surveys, with salary of \$400 per annum, who at the same time holds the office of clerk in the Treasury Department, with a salary of \$1,400 per annum; and the accounting officers should pay such salary.—(5: 765.)

38. *Seem*, that a person may hold two distinct offices under the government, and receive the salaries of both.—(6: 80.)

39. The salaries of all clerks in the Patent Office, like its other expenditures, are to be defrayed out of the patent fund.—(6: 319.)

40. The increase of salary for clerks of the first three classes, provided by the act of April 22, 1854, applies to clerks of similar classes in the State Department.—(6: 457.)

41. The increase of salary provided by the act of April 22, 1854, does not apply to any clerks in the Department of State above the third class.—(6: 464.)

42. Declarations of members of Congress in debate on the passage of a law cannot be received to control the legal intendment of the law.—(*Ibid.*)

43. The clerks in the office of the navy agent at Washington are not embraced by the provisions of the act of April 22, 1854, which augments the salaries of certain clerks of the executive departments.—(6: 527.)

44. The separate duties of the several clerks in the departments, except where they are specifically designated in particular cases by statute, are assigned to such clerks by the head of the department; and no posterior claim to extra compensation can be founded on the official acts done by a clerk, provided those acts constituted any part of the lawful general duties of the department.—(6: 583.)

45. The clerks of the courts of the United States in the Territories of Minnesota, New Mexico, and Utah, are not embraced by the provisions of the act of February 26, 1851, giving augmented fees to those officers in the Territory of Oregon.—(7: 648.)

V.—OF SOLDIERS AND MARINES.

1. Neither the pay, rations, nor clothing of enlisted marines who are taken by civil authorities for violations of the laws, can be withheld during their confinement and absence from their military stations.—(2: 396.)

2. Every volunteer mustered into service under the act of 23d of May, 1836, (2d §,) is entitled at once, and in one payment, to receive, in money, a sum equal to the full cost of the clothing of a non-commissioned officer, or private, as the case may be, in the regular troops of the United States, without reference to the time for which he may be kept in service.—(3: 159.)

3. And volunteers, whether for six or twelve months, are entitled to the cost of all those articles which are required to clothe a soldier in the army of the United States on his entrance into service; for a year, if he shall be enlisted for a year—for six months, if that be his term.—(3: 159.)

4. Those non-commissioned officers, musicians, and privates, only, are entitled to the three months' extra pay guaranteed in the 29th section of the act of 1838, who, having been enlisted for the term of five years in the regular army, shall have re-enlisted in their companies or regiments within two months before, or one month after, the expiration of their respective terms of service.—(4: 538.)

5. The extra pay was offered as a reward, not for re-enlisting for any period of time less than that of their first contract, but to induce able-bodied, disciplined, and experienced men to continue in the army for another full term of five years.—(*Ibid.*)

6. Wherefore, those non-commissioned officers, musicians, and privates of the army, who shall re-enlist—not for the full term of five years, but during the war with Mexico—will not be entitled to such extra pay.—(*Ibid.*)

7. Extra compensation paid to certain volunteers in the Mexican war, under the order of General Scott of 3d of May, 1847, is to be approved if there is a sufficient amount of the contribution fund to meet the payments.—(5: 152.)

8. The administrator of John Rush, a sailing-master in the navy, who became insane whilst in the service, and was placed on half pay in the hospital at Philadelphia, where he remained until his death in 1837, but for whom payment was not made after the death of his father in 1813, has a just claim on the department for the arrearage of pay, although the name of the insane man was dropped from the navy register. But, as there is no appropriation from which the payment can be made, an estimate of this claim should be presented to Congress, and an appropriation asked for to enable the department to pay it.—(5: 297.)

9. It is the settled policy of the government to encourage re-enlistments; and where, under the act of 3d March, 1847, soldiers have re-

received certificates of merit which entitle them to additional pay of two dollars per month, such pay does not cease at the expiration of the term during which they received the certificates, but continues through successive enlistments.—(5: 400.)

10. Where volunteers in the Mexican war were enlisted at Council Bluffs, Iowa, and discharged at Los Angeles, California, the travelling allowance of 50 cents for every twenty miles, provided for in act of 18th June, 1846, must be computed according to the overland, not the Panama route.—(5: 516.)

11. Soldiers, who re-enlist in the army within two months before, or one month after, the expiration of the term, are entitled to the bounty provided by the act of July 5, 1838, and also to that provided by the act of June 27, 1850, where the re-enlistment takes place in the vicinity of the military posts on the western frontier and at remote stations.—(6: 187.)

12. The act of March 3, 1855, section 1, embraces not only militia or volunteers whose military services were performed under the general command of the United States and in time of war, but also such as rendered military service, whether in war or not, and whether under the immediate authority of the United States or of a State or Territory, but who shall have been paid for such service by the United States.—(7: 606.)

VI.—WHEN IT COMMENCES.

1. A midshipman nominated and confirmed by the Senate, to take rank next after a lieutenant who holds a commission dated January, 1825, cannot draw the pay of a lieutenant until he receives his lieutenant's commission.—(2: 27.)

2. The pay of military officers may properly commence from the date of their acceptance, as they are liable to duty from that date. But neither in cases of new offices nor transfers from one corps to another can it commence until the appointee is subject to duty.—(2: 638.)

3. A captain stricken from the rolls of the army, and afterwards reinstated, by and with the advice of the Senate, can claim pay, after reinstatement, only from the date of his acceptance of the new commission.—(3: 105.)

4. The date of the written acknowledgment of the receipt of the order, expressing a readiness to obey it, where such written acknowledgment is transmitted by the surgeon, is the day from which

the increased pay under the act of 3d March, 1835, is to commence.—(3 : 198.)

5. Public officers are entitled to the pay and emoluments appertaining to their office only from the time they enter upon the performance of their duties; but the performance of duties, or the condition requisite to the legal ability to perform them, is the equity upon which salaries are predicated.—(4 : 123.)

6. A surgeon removed by the executive, and subsequently restored to the rank he would have had by virtue of his commission, is not entitled to pay for the time he was out of service, but only from the time of his restoration, as if he had always been in it.—(*Ibid.*)

7. An officer in the navy receiving an ante-dated commission is not entitled to pay from such ante-date.—(4 : 348.)

CONGRESS.

1. The territorial legislature of Oregon passed a law in February, 1851, removing the seat of government from Oregon City to Salem. This, by the organic act, they had power to do. But the law was deemed invalid for another reason, namely, because of multiplicity of contents: *Held*, that the remedy is with Congress.—(5: 525.)

(See *Territories*.)

2. Congress is empowered by the Constitution to make rules for the government and regulation of the land and naval forces of the United States.—(6: 10.)

3. Declarations of members of Congress in debate on the passage of a law cannot be received to control the legal intendment of the law.—(6: 464.)

4. Joint resolutions of Congress are not distinguishable from bills, and, if approved by the President, or if duly passed without the approval of the President, they have all the effect of law.—(6: 680.)

5. But separate resolutions of either House of Congress, except in matters appertaining to their own parliamentary rights, have no legal effect to constrain the action of the President or the heads of department.—(*Ibid.*)

6. *Seemle*, that Congress cannot make a contract for the transportation of the mails or any other administrative matter, that being parcel of the constitutional power of the Executive.—(7: 135.)

7. But it may, by appropriation, provide for paying an additional sum to a contractor as compensation, in the nature of a bill of private relief.—(*Ibid.*)

CONSTRUCTION.

1. Where an appropriation was made by Congress expressly for opening or improving a maritime channel by a particular method mentioned: *Held*, that the specification is not to be so construed as to defeat or control the general object.—(6: 19.)

2. Declarations of members of Congress in debate on the passage of a law cannot be taken to control the legal meaning of the law.—(6: 464.)

3. The provision of the act of August 4, 1854, increasing the pay of the rank and file of the army, takes effect immediately.—(6: 665.)

4. Joint resolutions of Congress are not distinguishable from bills, and, if approved by the President, or if duly passed without the approval of the President, they have all the effect of law.—(6: 680.)

5. But separate resolutions of either House of Congress, except in matters appertaining to their own parliamentary rights, have no legal effect to constrain the action of the President or of the heads of department.—(*Ibid.*)

6. The act of Congress of March 3, 1855, entitled “An act further to amend the act entitled ‘An act to reduce and modify the rates of postage in the United States, and for other purposes,’ ” takes effect at the commencement of the next fiscal quarter generally, but not until January in regard to the particular of requiring postmasters to place stamps on prepaid letters.—(7: 58.)

7. Congress authorized the Secretary of State to purchase of Mrs. Madison “all the unpublished manuscript papers of James Madison, now belonging to and in her possession,” for a certain sum of money. Mrs. Madison conveyed and delivered to the Secretary of State such papers as she understood to be intended by the act, but without schedule or inventory, and they were so accepted and paid for by the Secretary. Meanwhile, other manuscripts of Mr. Madison remained in her possession, and were disposed of by her son and executr: *Held*, that the contract, and delivery, and acceptance of manuscripts, with accompanying explanations, between Mrs. Madison and the Secretary of State, disposed of the question of what manuscripts were intended by the act of Congress.—(7: 104.)

8. A provision of an act of Congress, as it stands on the rolls, enacts

that a certain sum of money be paid to R. W. T., according to contract between him and the Menomonee Indians; but in fact, as the act passed to be enacted, it contained the following proviso, namely: "*Provided, That the same be paid with the consent of the Menomonees.*" *Held*, that, in his discretion, the President may abstain from proceeding to act under the general enactment, unless with the consent of the Menomonees, and submit the matter to Congress.—(7: 166.)

9. In general, acts of Congress are applicable, according to the subject-matter, in all parts of the United States.—(7: 293.)

10. Where it is not so, the fact is an exceptional one, and the exception is indicated by words either of exclusion or of inclusion in the act.—(*Ibid.*)

11. The acts of Congress regulating intercourse with the Indians are in full force in Oregon.—(*Ibid.*)

12. When questions arise as to the applicability in Oregon of a particular clause of those acts, the question depends on the subject, and is wholly independent of any reference to a supposed test of the convenience or the assumed rights of the whites as against the Indians.—(*Ibid.*)

13. The practice having grown up in Congress of late years to insert matters of general legislation, including allowances for private claims, the regulation of salaries, and many other objects, in the appropriations for the service of a future fiscal year, it becomes necessary now to disregard wholly the title and general tenor of such acts, and to scan and scrutinize each separate clause, and to construe each according to its own separate merits, and to give it immediate effect, if such be its natural signification.—(7: 303.)

14. Hence, where in any such act there is provision in general terms of the present tense, either for the addition to or the diminution of a salary, it takes effect from the approval of the act by the President.—(*Ibid.*)

15. The commissioners for the adjudication of private land claims in California are a quasi court.—(*Ibid.*)

16. Congress, on the 18th of May, 1798, passed an act entitled "An act authorizing the President of the United States to raise a provisional army," the fifth section of which is in the following words:

"*And be it further enacted, That whenever the President shall deem it expedient, he is hereby empowered to appoint, by and with the advice and consent of the Senate, a commander of the army which may be raised by virtue of this act, and who, being commissioned as lieu-*

tenant general, may be authorized to command the armies of the United States, and shall be entitled to the following pay and emoluments, viz: two hundred and fifty dollars monthly pay, fifty dollars monthly allowance for forage, when the same shall not be provided by the United States, and forty rations per day, or money in lieu thereof at the current price, who shall have authority to appoint, from time to time, such number of aids, not exceeding four, and secretaries, not exceeding two, as he may judge proper, each to have the rank, pay, and emoluments of a lieutenant colonel."—1 Statutes at Large, pp. 558, 559.

Congress, on the 15th of February, 1855, passed, in the following words :

" A resolution, authorizing the President of the United States to confer the title of lieutenant general by brevet, for eminent services.

" Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That the grade of lieutenant general be, and the same is hereby, revived in the army of the United States, in order that when, in the opinion of the President and Senate, it shall be deemed proper to acknowledge eminent services of a major general of the army in the late war with Mexico, in the mode already provided for in subordinate grades, the grade of lieutenant general may be specially conferred by brevet, and by brevet only, to take rank from the date of such service or services: Provided, however, That when the said grade of lieutenant general by brevet shall have once been filled, and have become vacant, this joint resolution shall thereafter expire and be of no effect."

Thereupon, the President of the United States nominated General Scott to the Senate to be lieutenant general by brevet, he was confirmed as such, and commissioned as such.

And, upon the question—Whether there is now in force any law fixing the pay and allowances of the grade of lieutenant general, it was held that the provisions of the fifth section of the act of May 28, 1798, have been repealed, in so far as regards the office which it created, by subsequent statutes, and especially, if by no other effectually and finally, yet certainly by that of March 2, 1821.—(7: 399.)

17. It does not clearly appear that the provisions of the fifth section of the act of May 28, 1798, as to the pay of the grade of lieutenant general, had been repealed, either expressly or tacitly, by any subsequent act, and the same is probably to be regarded as having remained in abeyance, capable of renewed legal efficacy, if that rank

should at any time be re-established, without additional legislation as to its pay and emoluments.—(*Ibid.*)

18. The enactment in the joint resolution that the “grade” of lieutenant general be “revived” does not have the consequential effect in law to revive the statute as such, provided the same had previously been repealed.—(*Ibid.*)

19. But, when a statute revives a statute grade or office, it is to be intended, if nothing to the contrary appear, that the statute provision as to pay and emoluments previously annexed to the grade or office, is by legal consequence revived, whether that provision of the statute had or had not been repealed.—(*Ibid.*)

20. Hence, the joint resolution must receive one or the other of these alternative constructions: Either, first, it intends that the pre-existing provision of statute, which fixed the pay of the grade of lieutenant general, had never been repealed; that the law on that subject was dormant, awaiting the existence of an office and a person to which and to whom it should become applicable, the office being supplied by the resolution, and the person by his appointment to the office; or, secondly, it intends, assuming that the statute office of lieutenant general with its pay and emoluments once existed, but had been repealed or had fallen into desuetude, to revive that statute office, for this occasion, and in so doing to resuscitate the statute pay and emoluments of the office; and, therefore, there is now in force a law, in the fifth section of the act of May 28, 1798, fixing the pay of the grade of lieutenant general.—(*Ibid.*)¹

1. The preamble of an act may be resorted to, to aid in the construction of the enacting clause, when any ambiguity exists. (*Beard vs Rowan*, 9 Pet. 301.)

See also, on the subject of construction, *Denn vs. Reid*, 10 Pet., 524; *United States vs. Dickson*, 15 Pet., 141; *Edwards' Lessee vs. Darby*, 12 Wheat., 206; *Brown vs. Barry*, 3 Dal., 365.

CONSUL.

1. A consul is not a public minister, nor entitled to the privileges attached to the person of such an officer.—(1: 41.)

2. A riot before the house of a foreign consul by a tumultuous assembly requiring him to give up certain persons supposed to be resident with him, and insulting him with improper language, is not an offence within the act of 30th April, 1790, for the punishment of certain crimes against the United States, and cannot be prosecuted in the courts of the United States.—(*Ibid.*)

3. A consul of the United States for Tunis, with instructions from the Department of State authorizing him, if he could find a suitable channel through which to negotiate the immediate release of the American prisoners at Algiers, to go as far as three thousand dollars per man, employed an agent, by promise of reward, to effect the object, and then drew bills on the State Department for such compensation, and for money paid, &c., in favor of a merchant at Gibraltar: *Held*, that the employment of an agent was justified under the power, but that the true meaning of the instructions was lost sight of by the manner of the employment of the agent for a compensation.—(1: 196.)

4. A consul is not privileged from legal process by the law of nations, nor is the French consul general by the consular convention between the United States and France; and though the suit arose out of public transactions, the President cannot interpose his authority.—(1: 77.)

5. It is not essential to the validity of a consular bond that it should be attested.—(1: 378.)

6. Foreign consuls and vice-consuls are not public ministers within the law of nations or the acts of Congress, but are amenable to the civil jurisdiction of our courts.—(1: 406.) See 2 *Dallas Rep.*, 297.

7. But consuls are bound to appear only in the federal courts; the Constitution and laws, contemplating the responsibility of consuls, having provided these tribunals, in exclusion of the State courts, in which they shall answer.—(*Ibid.*)

8. Consular jurisdiction depends on the general law of nations, existing treaties between the two governments affected by it, and upon the obligatory force and activity of the rule of reciprocity.—(2: 378.)

9. French consular jurisdiction in an American port depends on the correct interpretation of the treaties existing between his most Christian Majesty and the United States, and which limit it to the exercise of police over French vessels, and jurisdiction in civil matters in all disputes which may there arise, and provide that such police shall be confined to the interior of the vessels, and shall not interfere with the police of our ports where the vessels shall be. They also provide that in cases of crimes and breaches of the peace, the offenders shall be amenable to the judges of the country —(*Ibid.*)

10. The claim of the French envoy, therefore, for the exercise of judicial power by the consul of his government in the port of Savannah, is not warranted by any existing treaties, nor by a rule of reciprocity which the executive has power to permit to be exercised.—(*Ibid.*)

11. The executive will pay to the widow of a consul, having a salary, who has died in office abroad, upon her return, the amount which it has been customary to pay to consuls themselves upon their recall, viz: his salary for three months.—(2: 521.)

12. The funeral expenses of the deceased consul, and the incidental and contingent expenses of the consulate after his death, are a fair item of charge on the fund for the contingent expenses of foreign intercourse.—(*Ibid.*)

13. And where the son of the deceased consul remains at the port and discharges duties of consul, which are recognized by the government, he may receive the compensation fixed by law for such services.—(*Ibid.*)

14. Foreign consuls in the United States are entitled to no immunities beyond those enjoyed by foreigners coming to this country in a private capacity, except that of being sued and prosecuted exclusively in the federal courts.—(2: 725.)

15. If any foreign consul shall be guilty of any illegal or improper conduct, he will be liable to the revocation of his exequatur, and to be punished according to our laws, or he may be sent back to his own country, at the discretion of our government.—(*Ibid.*)

16. The act of Congress to carry into effect certain provisions in the treaties between the United States and China and the Ottoman Porte, giving certain judicial powers to ministers and consuls of the United States in those countries, not having designated any particular place for the confinement of prisoners arrested for crime, the same is left for regulation under the fifth section, or, in the absence of any such regulation, to the discretion of the acting functionary.—(5: 67.)

17. The expenses of arrest and support in prison, in such cases, must be paid from the fund created by the execution of the act.—(*Ibid.*)

18. Whether the act embraces Egypt and the Barbary States, which are under the dominion of the Ottoman Porte, is a political question, which cannot be solved without the aid of the Department of State.—(*Ibid.*)

19. In order that the master of a ship, on her "arrival" in a foreign port, shall be compellable to deposit the ship's papers with the consul, the arrival must be such an one as involves entry and clearance.—(6: 163.)

20. Consuls have no authority to order the sale of a ship in a foreign port, either on complaint of the crew or otherwise.—(6: 617.)

21. If, on such sale, a consul retains money for the payment of seamen's wages, he acts at his own peril, and is responsible to the owners.—(*Ibid.*)

22. The United States are not responsible in damages for moneys illegally received by consuls, or for any other act of malfeasance of theirs in office.—(*Ibid.*)

23. Consuls of the United States have no lawful authority as such to solemnize marriages in countries comprehended within the pale of the international public law of Christendom.—(7: 18.)

24. *Secus*, in countries not Christian, where by convention or in fact the rights of extritoriality are possessed by citizens of the United States.—(*Ibid.*)

25. It belongs exclusively to the President of the United States, by and with the advice and consent of the Senate, to appoint consular officers to such places as he and they deem to be meet.—(7: 242.)

26. Consuls are officers created by the Constitution and the laws of nations, not by acts of Congress.—(*Ibid.*)

27. Congress may by law vest the appointment of inferior consular officers in the President alone or in the Secretary of State.—(*Ibid.*)

28. When the act of the last Congress, remodelling the consular system, says that from and after the 30th of June next the President *shall* appoint consuls to certain places, it means that he *may* appoint them, if he see fit, with such reference to the advice and consent of the Senate as the Constitution prescribes.—(*Ibid.*)

29. The act does not require him to appoint new consuls, or to reappoint the present incumbents, at the places mentioned, nor to remove consuls now existing at places not named in the act, nor to omit to appoint new ones at other places not named in it.—(*Ibid.*)

30. The rates and the mode of compensation, by the act, take effect in regard to all consuls at the places named, and lawfully in office at the day fixed, whensoever they have been or shall be appointed.—(*Ibid.*)

31. All the provisions of the act regarding the duties of consular officers take effect on the 1st of July.—(*Ibid.*)

32. Nothing in the act forbids the continued appointment of vice-consuls or consular agents, with approval of the Secretary of State.—(*Ibid.*)

33. The several consuls for whom the act provides annual salaries, must collect and pay over all fees for consular service to the government.—(*Ibid.*)

34. The penalty of removal from office, which the act affixes to the non-performance of some duties by consuls, is inoperative, because removal from office cannot be enacted as a statute penalty, it being a matter for the constitutional discretion of the President.—(*Ibid.*)

35. Consuls not duly accounting for fees collected for consular service are subject to indictment for the statute crime of embezzlement, in the terms of the act of 1846, which regulates the collection, safe-keeping, and disbursement of public moneys.—(*Ibid.*)

36. Consuls, commercial agents, vice-consuls, and consular agents, for whom salaries are not provided by the act, are entitled to continue to receive fees for consular service.—(*Ibid.*)

37. The act does not repeal any fees except those which it expressly mentions, and leaves all others as they now stand by act of Congress or regulations of department.—(*Ibid.*)

38. The provisions of the act against the appointment of any citizen of the United States, not actually residing therein or abroad in the public service at the time, is directory only, not mandatory on the President.—(*Ibid.*)

39. In taking charge of the estates of citizens of the United States dying abroad, the power of consuls is limited to collecting the assets abroad, discharging them of local liabilities, reducing them to money, and transmitting to the treasury, subject to the orders, both before and afterwards, of the lawful executor or administrator.—(*Ibid.*)

40. Consuls general are the proper persons to hold consular posts in the capitals of the great transmarine dependencies of European powers, and to constitute the medium of communication with the local governor or captain general, and are appointable at the discretion of the President with consent of the Senate.—(*Ibid.*)

41. A consul may be authorized to communicate directly with the

government near which he resides ; but he does not thereby acquire the diplomatic privileges of a minister.—(7 : 343.)

42. Nor does he, *as consul*, acquire such privileges by being appointed, as he may, at the same time chargé d'affaires.—(*Ibid.*)

43. To the question whether a consul can solemnize marriage or not, as consul, it is wholly immaterial whether he be or not a subject of the foreign government.—(*Ibid.*)

44. The extritoriality of foreign consuls in Turkey and other Mohammedan countries is entirely independent of the fact of diplomatic representation, and is maintained by the difference of law and religion ; being but incidental to the fact of the established extritoriality of Christians in all countries not Christian.—(*Ibid.*)

45. Consuls, as international commercial agents, originated in the colonial municipalities of the Latin Christians in the Levant, which municipalities were self-governing through their "consuls," the ancient title of municipal magistrates in Italy.—(*Ibid.*)

46. Rights of private extritoriality having ceased to exist in Christendom, foreign consuls have ceased, mostly, to be municipal magistrates of their countrymen there ; but they still continue not only international agents, but also administrative and judicial functionaries of their countrymen in countries outside of Christendom.—(*Ibid.*)

47. In virtue of the treaty between the United States and China, all citizens of the United States in China enjoy complete rights of extritoriality, and are amenable to no authority but that of the United States.—(7 : 495.)

48. The act of Congress empowers the commissioners and consuls of the United States in China to exercise judicial authority over their fellow-citizens.—(*Ibid.*)

49. The several consuls, each in his consular circumscription, have, by express provision of statute, original jurisdiction in all civil cases of contract, or the like sounding in damages, which arise between two or more citizens of the United States, and in all crimes committed by an American.—(*Ibid.*)

50. In such civil matters of contract, or the like sounding in damages, the consul sits with or without assessors, according to circumstances ; and in case of difference of opinion between him and his assessors, an appeal lies to the commissioner.—(*Ibid.*)

51. In all criminal matters, except certain petty misdemeanors, the consul sits with assessors, and decides subject to appeal as in civil cases to the commissioner. Save that in capital cases, there is no ap-

peal, but the conviction is invalid unless approved by the commissioner.—(*Ibid*)

52. In controversies between citizens of the United States and subjects of China, the case is to be tried by the court of the defendant's nation; and so in controversies between citizens of the United States and those of any friendly foreign government.—(*Ibid.*)

53. The consular court has no authority by the treaty or the statute to entertain jurisdiction of a suit by the Chinese government for duties.—(*Ibid.*)

54. In all criminal matters, and in all civil matters of contract, or the like sounding in damages, the commissioner has only appellate jurisdiction.—(*Ibid.*)

55. As to all other matters, such as probate of wills, divorce, intestacy, copartnership, chancery, admiralty, proceedings *de re* or *in rem*, personal or prerogative writs, division of lands, and the like, the statute makes no specific provision, leaving them to regulations of the commissioner and consuls.—(*Ibid.*)

56. Vice-consuls are competent to act, when duly appointed or approved as such by the Secretary of State.—(*Ibid.*)

57. A substitute, or vice-consul, left in charge of the consulate during the temporary absence of the consul, is to be compensated out of the statute emoluments of the office, subject to regulations of the Department.—(7: 714.)

58. An acting consul, in charge of a consulate during actual vacancy of the consulate, is entitled to receive the statute compensation of the office.—(*Ibid.*)¹

¹ It is not competent for a neutral consul, without the special authority of his government, to interpose a claim on account of the violation of the territorial jurisdiction of his country.—(*The Anne*, 3 Wheat, 435.)

A vice-consul, duly recognized by our government, is a competent party to assert or defend the rights of property of individuals of his nation in a court of admiralty.—(*The Bello Corrunes*, 6 Wheat., 152.)

CONTRACT.

- I. GENERALLY.
 - II. PARTIES TO CONTRACTS.
 - III. CONTRACTS WITH NAVY DEPARTMENT.
 - IV. CONSTRUCTION OF CONTRACT.
 - V. LIABILITY OF UNITED STATES UNDER CONTRACTS.
-

I.—GENERALLY.

1. The stockholders are not individually liable for the notes of the Saline Bank, for the reason that both the notes issued by the bank and the discount notes given to it, are contracts founded in a breach of the law, and which a court will not aid in enforcing.—(1: 214.)

2. Where contracts for supplies for the army contain the clause providing for a supply in case of deficiency by the commanding general, or person appointed by him at each post or place, the person appointed by the commanding general to take command at the post or place is the person authorized to supply the deficiency.—(1: 260.)

3. Where the commandant at a post anticipates a failure in supplies contracted to be furnished, he may make provision for them before the failure absolutely occurs; yet, the contractor is not liable for them until the failure takes place: then he is liable, whether they were purchased previously or subsequently; for it is the *failure and time* upon which the responsibility arises.—(*Ibid.*)

4. If a general had a right to draw supplies from a place out of his military department, through the enemy's country, he was bound to furnish an escort from that place through that country. If the case were one of real and imminent danger, the contractor had a right to an escort; and if it were not furnished he is exonerated from the consequences of the failure.—(*Ibid.*)

5. Where in a contract to furnish supplies, it was agreed in case of failure, "that the commanding general, or person appointed by him, at each post or place, should have the power to supply," &c.: *Held*, that the contractor was not liable to pay for rations in case of his failure, except such as were furnished by the commanding general, or

person appointed by him at the post or place where the rations were stipulated to be furnished.—(1: 270.)

6. The general power given to the President to lease the saline on the Wabash, carries with it all the incidental powers necessary to a settlement with the lessees to transfer the kettles to a subsequent lessee, or to a former one, for a debt growing out of a lease of the works.—(1: 352.)

7. Lessees are not entitled to pipes found on the premises and paid for to the preceding lessees, but only for permanent and useful improvements made by them, and which were previously authorized by the President.—(*Ibid.*)

8. The contractor to build a light-house at the mouth of the Mississippi is not answerable for the failure of the foundation unless the choice of the same were left to himself.—(1: 372.)

9. A purchaser of a tract of land as to part of which there was authority to sell, and as to the other part there was not, has the option to avoid the entire contract, or to receive a patent for such part as could be sold.—(2: 186.)

10. The terms of the specific appropriation of the 3d March, 1829, control the general provisions of the act of 1823 concerning the disbursements of public money, so that the President may fulfil the contract of the late President with Persico.—(2: 197.)

11. Where a contractor with the government to deliver a certain quantity of timber by a time specified failed in respect to the time, and suffered a forfeiture of ten per cent. thereby, which the Fourth Auditor and Second Comptroller retained from his account, it cannot be refunded to the contractor except by authority of Congress.—(2; 480.)

12. When such contracts have been made, the rights of the parties under them become at once vested, and it is not in the power of the agents to modify or release them.—(*Ibid.*)

13. Contracts for bricks and masonry at Fort Monroe ought to have been deposited with the Comptroller, and accounts arising therefrom ought to be adjusted at the Treasury Department; until that shall be done, the Secretary of War cannot be called on to order payment.—(2: 518.)

14. The Norfolk Drawbridge Company have not the power to execute a contract or conveyance to the United States, except with the consent of the legislature of Virginia, expressed in a law, conferring the right to remove the bridge over the southern branch of Elizabeth

river, and to enclose the road leading thereto. Nor can said company otherwise extinguish the rights of the public thereto.—(2: 512.)

15. Marriage, so far as its validity in law is concerned, in New York is considered as a civil contract; no formal solemnization by a minister, or any particular officer, being requisite.—(3: 287.)

16. By the act of 1815, which repeals all other acts coming within its purview, the colonel, or senior officer of the Ordnance Department, under direction of the Secretary of War, may make contracts for the supply of ordnance without previously advertising for proposals.—(3: 293.)

17. Where a contractor for certain specified rations for the army, to be delivered at a particular place, including a certain ration of distilled liquor, was, after the execution of his written contract, directed by the War Department to furnish an additional ration of liquor to the troops on fatigue duty: *Held*, that he had the right to elect, in respect to the price, to furnish such ration under his contract, or to demand the fair market value thereof at the time and place.—(3: 463.)

18. Where the district court has so found, and Congress has recognized and confirmed the principle, the accounting officers are required to do so likewise in their settlement of the account.—(*Ibid.*)

19. Where proposals in the usual form for the transportation of the mail between certain specified points had been advertised and accepted without certain knowledge, on either side, that the condition of the roads was such that coaches could pass over the route, and, after trial, it was found that they were not such as to permit the execution of said contract according to its terms: *Held*, that the contractor be released from further obligations under it, and that he receive compensation for transporting the mail by steamboat.—(3: 492.)

20. The contractor for parchments for land patents delivered a portion of them in printed form, and received payment therefor, augmented by the price of the printing: *Held*, that the amount thus erroneously paid may be deducted from other sums yet due him.—(3: 539.)

21. The contractors for the printing of parchments cannot be paid for such printing; nor are they entitled to the amount thus overpaid to the contractor for parchment.—(*Ibid.*)

22. Contractors for the removal of the Chickasaws to their new homes must be paid from the appropriation of the Chickasaw fund, made by the act of the 20th of April, 1836, even though some of the

Indians did not avail themselves of the means furnished to remove them.—(3: 561.)

23. Neglect of the officers and agents of government to give a contractor for rations, to be furnished the Creek Indians, due notice of an unexpected large number of them to be removed, and supplied with rations at an unseasonable period of the year, is sufficient to excuse the non-performance of the contract, and to protect the contractor from damages.—(3: 632.)

24. Payment for rations furnished before the contract was abandoned by the contractor ought not to be withheld by the government on account of such non-performance.—(*Ibid.*)

25. Where the Auditor for the Post Office Department was authorized to audit and settle the accounts of C. for carrying the mails, if the Attorney General should be of the opinion that the Postmaster General had not the right, under the contract with him, to make certain alterations in the mode of transporting them, and the question being submitted to the Attorney General for instructions to the Auditor concerning the authority of the Postmaster General to change the time, frequency, and mode of transporting the mails: *Held*, that as the contract reserved the right to discontinue the route whenever he should deem it useless, upon notice and the allowance of one month's extra pay, and as he concluded to discontinue it only a portion of the time, the contractor had an option, as soon as he received his notification, to renounce it entirely, and receive his month's pay in advance.—(4: 140.)

26. But as he preferred going on with the service on the new terms, he has nobody to complain of but himself, and is entitled to be paid only for the services he has actually rendered.—(*Ibid.*)

27. Neither the Secretary of the Navy, nor of any other executive department, can lawfully contract for the United States, except under a law authorizing it, or making an appropriation adequate to fulfil the engagement.—(4: 600.)

28. Wherefore, the Secretary of the Navy cannot lawfully contract for the construction of dry docks at Kittery, Philadelphia, and Pensacola, and bind the government to pay therefor, an amount exceeding the appropriations already made for that object, as the same has not been specially authorized.—(*Ibid.*)

29. But as the works for which the appropriations are made are important, and as it is expedient that the construction thereof should progress as far forth as may be practicable, the Secretary of the Navy may expend so much of the appropriation as may be necessary in

purchasing sites and materials, with a view to their completion under the future direction of Congress.—(*Ibid.*)

30. Where the government entered into a contract with an individual for removing the Miamies, estimated at 650 souls, from Indiana to the country assigned them west of the Mississippi, and to subsist them, &c., for the sum of fifty-five thousand dollars, upon condition that should the number be greater or less, there should be neither addition nor reduction of the amount, and that he should not use any force to compel them to emigrate; and the said contractor, pursuant thereto, removed and subsisted 384 of the Indians, being all who were found willing to emigrate: *Held*, that said contractor has entitled himself to the whole sum stipulated for removing and subsisting the tribe.—(5 : 63.)

31. The government having stipulated that the granite to be furnished from the quarries in Quincy, Massachusetts, for the custom-house at New Orleans, should be inspected, approved, and the quantity thereof determined by an inspecting agent of the United States, to be designated or appointed by the Secretary of the Treasury, at Boston or Quincy, cannot now legally insist upon transferring the inspector and admeasurement to New Orleans.—(5 : 296.)

32. Neither the workmanship nor the admeasurement of the granite was stipulated to be adjudged and determined at that place.—(*Ibid.*)

33. The government is bound and concluded by the admeasurement certified at Boston or Quincy, by the agent of the government there; subject, however, to the abatement of damage sustained during the voyage, or breakage in landing on the levee, or defect in the quality of the stone when finally delivered.—(*Ibid.*)

34. As the Postmaster General is authorized by the 14th section of the act of 3d March, 1845, to contract, without advertising, for carrying mails by steamboats and railroads, he may disregard the bid for the route between Washington and Aquia Creek, made under an advertisement, and contract, without advertising, with the Fredericksburg and Potomac Railroad Company, to carry the mail by steamboat and railroad from Washington to Richmond.—(5 : 373.)

35. The law in such special cases vests in the Postmaster General a discretionary power.—(*Ibid.*)

36. A contract with the government is not assignable. *A fortiori* an assignee, under an invalid contract, has no claim upon the United States.—(5 : 502.) [But see *infra* § 53.]

37. An admitted clerical error in a contractor's bond should not operate to his prejudice.—(5 : 546.)

38. Where the office of architect of the public buildings was offered to the acceptance of an individual, at a specified salary, and the offer was accepted, such offer and acceptance became a contract with the individual during the continuance of the work.—(5 : 754.)

39. It is competent for the government to assent to the substitution of new parties to contract with the United States, in order that the original stipulations may be carried out.—(5 : 738.)

40. But it is not competent for contractors to make transfers without the consent of the government.—(*Ibid.*)

41. The Secretary of War may declare the contract with Hawkins, for the completion of the public works at Mobile, forfeited, and prosecute for a breach of it.—(5 : 742.)

42. Contractors with the government, to whom advances have been made by the department, are not the persons intended by “persons in arrears” in the act of 1822, who are to pay all arrears into the treasury before they can proceed further with the fulfilment of their obligations.—(5 : 745.)

43. Contractors with the government may transfer with the assent of government, and when such transfers are made and assented to, the assignees to be in the place of the original party.—(5 : 747.)

44. All executory contracts of individual Indians for the payment of money or fees are null by statute, but not of necessity the executory contracts of a nation or tribe of Indians.—(6 : 49.)

45. The President may or not, in his discretion, recognize the pecuniary engagements of a tribe of Indians.—(*Ibid.*)

46. The President will examine into all such contracts, and confirm them or not, according to what appears the legality and sufficiency of their consideration and of their relation to the interests of the Indians.—(*Ibid.*)

47. A head of department, advertising according to law for proposals for stationery, is the competent and only judge of the matters of fact involved in the acceptance or rejection of any of the proposals.—(6 : 226.)

48. In a matter which the law confides to the pure discretion of the Executive, the decision by the President, or proper head of department, of any question of fact involved, is conclusive, and is not subject to revision by any other authority in the United States.—(*Ibid.*)

49. *Seem*, if the provisions of law which require certain contracts to be advertised are disregarded, that the contracts, while they remain executory, and without commencement of performance, are subject to be rescinded.—(6 : 406.)

50. The sureties of a mail contractor are responsible to the government for the whole term of the contract, and as well after the death of their principal as before.—(6: 410.)

51. It is in the discretion of the President whether, and at what time, if at all, engagements of indebtedness made by tribes of Indians to citizens of the United States shall be allowed and paid by the government.—(6: 462.)

52. Where an act of Congress gave to a railroad company credit on certain railroad iron imported, the price to be paid in four years by set-off on a contract for the transportation of the mails: *Held*, that the Postmaster General may contract anew with the same company for additional service at additional compensation, without requiring that the new compensation be charged to the debt for railroad iron due under the first contract.—(6: 668.)

53. In a contract for supplies entered into by the United States, it was expressly stipulated that the government should not be held to recognize or to pay any assignee of the party, or any persons but him or his duly appointed attorney: *Held*, that such a condition can be lawfully made, and that under it the government are not bound to regard any pretended assignees of the contract.—(7: 683.)

II.—PARTIES TO CONTRACTS.

1. Although the employment of members of Congress as assistant counsel to the district attorneys of the United States was not within the view of Congress at the passage of the act of 21st April, 1808, yet the language of the act is so broad as to include and forbid a contract for professional services in a case.—(2: 38.)

2. A partnership, of which a member of Congress is a member, cannot, under the act of 1808, enter into a contract with the government; but, if he withdraw from it, the contract may be concluded with the other partners.—(4: 47.)

3. Contracts entered into by infants with the officers of the government are voidable only at the instance of the infant himself, and not absolutely void.—(4: 333.)

4. The sureties to a contract made by an infant with the government are clearly bound for his faithful performance of the contract; for, though the infant may excuse himself on the ground of his non-age, the privilege is personal to himself, and cannot be made available as a defence by them.—(*Ibid.*)

5. A contract made by the proper officers of the government with a

person who, during the existence of the same, is elected a member of Congress, is not affected by such election.—(5: 697.)

6. It is competent for the government to assent to the substitution of new parties to contract with the United States, in order that the original stipulations may be carried out.—(5: 738.)

7. But it is not competent for contractors to make transfers without the consent of the government.—(*Ibid.*)

8. The Topographical Bureau, in charge of the pier and breakwater constructed by the United States for the improvement of the harbor of Cleveland, may lawfully enter into contract for the use of the same by railway companies.—(6: 199.)

9. *Semble*, that Congress cannot make a contract for the transportation of the mails or any other administrative matter, that being parcel of the constitutional power of the Executive. But it may, by appropriation, provide for paying an additional sum to a contractor as compensation, in the nature of a bill of private relief.—(7: 135.)

10. On a contract between the United States and A. G. Sloo, which contract is now performed by the co-assignees of said Sloo: *Held*, that the United States may pay for the mail service under said contract and assignment to any two of the co-assignees.—(7: 676.)

III.—CONTRACTS WITH THE NAVY DEPARTMENT.

1. All contracts and purchases, entered into and made by the Navy Department, must be entered into and made by, or under the direction of, the Secretary.—(2: 257.)

2. In contracts with the Navy Department, where the public exigencies do not require the immediate delivery of the article purchased, or the performance of the service contracted for, it is necessary to previously advertise for proposals respecting the same; unless the article be a steamboat or some similar structure.—(3: 437.)

3. Where immediate delivery is necessary to the wants of the public service, the article required must be obtained by open purchase.—(*Ibid.*)

4. The proviso contained in the appropriation act of 3d March, 1843, as to how supplies are to be furnished for the navy, does not affect contracts previously made.—(4: 151.)

5. A retroactive effect, especially where it would be a violation of contracts, is not to be given, by construction, to the words of a statute, unless they are too express to admit of any other interpretation.—(*Ibid.*)

6. Since the act of 3d March, 1843, the Secretary of the Navy is not

competent to renew a contract which has expired, without advertising, as is required by the first section of that act; nor is it competent for the department to pay to the contractors, upon forfeited contracts, the ten per cent. reserved as collateral security, whether the same has been reserved on original or renewed contracts.—(4: 283.)

7. The Navy Department has not the right, under the act of the 3d March, 1843, in awarding the contract to the lowest bidder, to modify its terms in regard to the time of delivery, or any other of its material elements.—(4: 334.)

8. The Secretary of the Navy, in contracting for water-rotted hemp for the use of the navy, is restricted, in the manner of purchase, by the act of 3d March, 1843, which requires him to advertise for the articles, to receive bids, and to award the contract for it to the lowest bidder.—(4: 475.)

9. Purchases in open market cannot be resorted to, except in cases of, and in reference to, such articles as are wanted for use so immediate as not to permit of contracts by advertisement.—(*Ibid.*)

10. The contract of the navy agent at New York with B., for piles for the dry-dock at Brooklyn, to be delivered after Congress should make further appropriations, being in advance of any appropriation for such object, is contrary to section 6 of the act of 1st May, 1820, and not binding on the department.—(4: 490.)

11. Where a contractor for supplies for the navy, who was bound in separate contracts to furnish sugar and tea in stipulated quantities during a fiscal year, made default in respect to the sugar, but furnished the tea by causing it to be shipped to the naval storekeeper by a house in New York, to whom the contractor endorsed over the bills for the same, and payment has been refused him on account of the contractor's defalcation on the contract for sugar: *Held*, that the sale of the tea was made to the contractor, and not to the government, and that the amount due therefor may be withheld, and set-off as against the damages sustained by the government on account of the non-fulfilment of the other contract.—(4: 551.)

12. The written proposal of the Secretary of the Navy, in reply to a letter of the owner of certain lots situate on Wallabout bay, containing an offer of sale, and a statement that if the offer should be entertained the question of final purchase might be left open until the adjournment of Congress, to the effect that he would recommend to Congress to appropriate a certain sum for the purchase of said lands for the government, with the understanding that the owner should make a perfect title, &c., and accepted by such owner, did not bind

the government so far as to subject it to the payment of assessments upon the land subsequently levied by the corporation of the city of Brooklyn.—(5: 15.)

13. The Secretary had no right to contract for the land without authority from Congress, and now has no right to agree to pay for the same any sum beyond the amount appropriated.—(*Ibid.*)

14. It is incumbent on the owner to remove the incumbrance from the premises.—(*Ibid.*)

15. The contract for embankment in the navy yard at Memphis is not within the true meaning of the proviso in the naval appropriation act of 3d March, 1843.—(5: 89.)

16. It is a well settled rule of construction, that a specification of items, followed by general terms, restrains such terms to items of a like character with those specified.—(*Ibid.*)

17. The joint resolution of Congress of the 9th May, 1848, providing the manner of obtaining American water-rotted hemp for the use of the navy, and the advertisement of the Secretary of the Navy pursuant thereto, alike require proposals to be submitted, which shall state the price at which the bidder will furnish the stipulated quantity per year for the entire five years.—(5: 158.)

18. Bidders who propose different prices for different years, and reducing the price for the last year to occasion a lower average than the bids of competitors, might, if their contracts were accepted, have opportunities for the exercise of bad faith with the government, which a different method of contracting might prevent.—(*Ibid.*)

19. If, however, such bids shall be accepted, the lowest bids should be charged with the interest of the excess of bids over other competitors for the years where there may be an excess, and the average be struck from the aggregate found.—(*Ibid.*)

20. Contracts for building iron steamers at Pittsburg, and furnishing engines therefor, are to be construed according to their obvious meaning, independently of any antecedent contract between the same parties, and of any orders, written or verbal, which any officer of the United States may have given concerning them before they were entered into.—(5: 170.)

21. Congress having contemplated the construction of five steamships for the mail service, and for the ultimate augmentation of the naval armament, and having authorized advances to be made therefor only upon each of them after it should be launched, and the contractors having received the ratable proportion of the amount authorized upon

the four of them now afloat, no further advances can be legally made until the fifth shall be launched.—(5 : 245.)

22. The advances of money authorized were intended to be so made as to insure and hasten the building of every one of the five ships contracted for.—(*Ibid.*)

23. The import and intent of the act of 3d March, 1851, in relation to the floating dry-dock in California is, that if the individuals who were parties to the original contract are willing to enter into a contract modified as required by the act, and will agree to do the work at the estimates made by the Navy Department, and if the Secretary considers those estimates to be fair and reasonable, then the Secretary is required to close the contract upon the terms specified; and, in that case, it will not be necessary to advertise.—(5 : 311.)

24. But if either the designated contractors shall refuse to agree to do the work at the estimates referred to, or if the Secretary shall consider those estimates as unfair, or unreasonable, the subject is to be thrown open to the competition of bidders by an advertised notice of sixty days.—(*Ibid.*)

25. D. and M. entered into a contract with the Secretary of the Navy to construct a floating dry-dock, basin, and railway, at such place in the navy yard at Philadelphia as the department might select for shoring and securing certain vessels of the line; and, on the completion of the same, the experiment of docking a vessel failed because of insufficient depth of water: *Held*, that the contractors had fully performed the stipulations in their contract, and were not responsible for insufficiency of water.—(5 : 407.)

26. The twenty per cent. retained by the United States on all payments made to the contractors should now be paid them.—(*Ibid.*)

27. A provision of statute empowered the Secretary of the Navy to make a contract on time for the supply of American water-rotted hemp, but the power was not executed. A subsequent provision contained appropriation for the object, but required purchase in open market: *Held*, that the latter provision so far repealed the former, that a contract on time for this object, afterwards made by the Secretary of the Navy, was void for want of power.—(6 : 40, 99.)

28. The law requires that executory contracts for supplies and materials for the departments shall be duly advertised.—(6 : 99.)

29. The provisions of the act of March 3, 1853, directing the Secretary of the Navy to complete and carry into execution a certain contract for the construction of a floating dock at San Francisco, are mandatory in their legal effect.—(6 : 551.)

IV.—CONSTRUCTION OF CONTRACTS.

1. The words “within two years *from* the time of sale” used in the clause of the act of Congress giving the owners of lands, sold for the taxes of 1815 and 1816, the right to redeem them of the purchasers at the tax sales, exclude the day of sale from the computation.—(1 : 364.)

2. Contracts for rations which provide that supplies for certain posts shall be furnished *six months in advance*, require a supply of six months’ rations not in advance of a perpetually advancing point of time, but only in advance of the point of time at which the supply is required to be placed at the post.—(1 : 389.)

3. Where a vessel was chartered by the navy agent to convey certain supplies to the Pacific, with stipulations to proceed first to Valparaiso to receive orders as to the discharge of her cargo, and then, in conformity to such orders as should be there received, either to discharge the cargo there or to proceed to Lima and discharge there: *Held*, that the charter-party contemplated only one port of delivery.—(2 : 697.)

4. A portion of the freight having been discharged at Valparaiso and the balance at Lima, a case has occurred which was not provided for nor contemplated in the contract, and which ought to be settled by the general rules of law and equity, aided by the analogous provisions contained in the special agreement.—(*Ibid.*)

5. In the case under consideration, the shipowner is entitled, at his option, to consider either Valparaiso or Lima the port of delivery, and to apply to the case, after making his selection, the special provisions of the charter-party.—(*Ibid.*)

6. Where a contractor for army supplies agreed to furnish for the army, upon the requisition of the commandant, a supply of provisions for six months in advance, at Detroit, and for nine months at Mackinac, and was required by the commanding officer to deposit more rations than were required for six months’ supply of the troops stationed at Detroit, and ten per centum in addition for contingencies, and the question of the rate of compensation for the excess having been passed upon by a court, and the matter sent to the accounting officers to be adjusted on principles of justice and equity, by an act of Congress requiring them to recognize the judicial decision: *Held*, that the contractor must be held to supply at his contract price the amount necessary for six months’ supply at Detroit, and nine months’ supply at Mackinac, and ten per centum besides for contingencies, and no

more, and that for the excess he should be allowed the fair market value.—(3: 524.)

7. In general, where the Constitution or an act of Congress requires the President to do a thing which requires the expenditure of money, he may lawfully do it, or contract to have it done, in the absence of any adequate appropriation for the object; and the cost of the thing becomes a lawful charge on the government.—(6: 26.)

8. Where, by the special provision for a particular work commenced and in progress, it was provided that nothing in the act should be so construed as to authorize any officer of the government to bind the United States by contract beyond the amount of existing appropriation: *Held*, that if the public interest required the President to make a contract for the work exceeding such amount, he might lawfully do so, subject to the chance of future appropriations for the object, without which the contract would not bind the United States.—(*Ibid.*)

9. A special provision of law enacted that “all contracts now existing” in relation to a given object, “not made according to law, are hereby cancelled:” *Held*, that under this law the President is to judge whether such contracts were made “not according to law;” that the law does not determine this point; and, query, whether it could be determined by act of Congress.—(*Ibid.*)

10. Enlistments into the army, made under the inducements held out by the laws of the United States, are contracts; and, although the government be a party, still the contracts “ought to be construed according to those well established principles which regulate contracts generally.”—*Huidekoper’s Lessee vs. Douglass*, 3 Cranch, p. 70.—(6: 187.)

11. When a letter of attorney forms part of a contract, and is to secure the repayment of money lent, or has other valuable consideration, even if not made irrevocable in terms, it is to be deemed so in law.—(7: 35.)

12. Congress authorized the Secretary of State to purchase of Mrs. Madison “all the unpublished manuscript papers of James Madison, now belonging to and in her possession,” for a certain sum of money. Mrs. Madison conveyed and delivered to the Secretary of State such papers as she understood to be intended by the act, but without schedule or inventory, and they were so accepted and paid for by the Secretary. Meanwhile, other manuscripts of Mr. Madison remained in her possession, and were disposed of by her son and executor; *Held*, that the contract, and delivery, and acceptance of manuscripts, with accompanying explanations between Mrs. Madison and the Sec-

retary of State, disposed of the question of what manuscripts were intended by the act of Congress.—(7: 104.)

V.—LIABILITY OF THE UNITED STATES UNDER CONTRACTS

1. The distinction made in the department between rations in deposit and rations for daily issues has no warrant in the army contracts; nor can any military order create it in such a way as to affect the bearing of such contracts. A quantity of provisions only, called a supply of rations for a specified time, is required, and those are to be issued by the contractor; and in case the commandant of the post where they are to be furnished makes an order for more rations, or for a different disposition of them than the contract provides, it is imperative upon the question of the contractor's legal obligations under the contract, but does not exonerate the government from payment.—(1: 389.)

2. If the contractor for supplies for daily issues shall be required to place at a given post a specified number of rations for a specified time, the government must either consume them or pay for them; for the requisition is an assurance on the part of the government that the rations are necessary and will be consumed and paid for.—(*Ibid.*)

3. Where the government agreed with W. and T., army contractors, to furnish a proper store-house in which the provisions were to be deposited from time to time and kept, and that they should suffer no loss for the want of it; and where provisions, furnished under such a contract at Fort St. Philip, were in a temporary building outside the fort, on the margin of the river, and exposed to its overflowings, and were destroyed by flood: *Held*, that the government was liable for such loss.—(2: 408.)

4. The risk of supplies purchased for the army follows the title.—(3: 115.)

5. The title to a quantity of pork contracted for by the proper officer, prepared and designated by the vendors, and an order given upon the packers for it, is in the United States; and if it be then destroyed, the loss must fall upon the government.—(*Ibid.*)

6. In case a contract for services be rescinded by the United States, without malfeasance of the other party, and after the services have been partly performed by him, if he claim unliquidated damages as for breach of contract, the case is beyond the powers of the accounting officers of the treasury; but if he waive all other claims, and elect to take payment as for part performance in discharge of the contract, it

is a mere question of account to be passed by the proper Auditor and Comptroller.—(6 : 496.)

7. In the case of a contract with the government rescinded for lawful cause, but without fault on the part of the contractor, the latter has no right to vindictive damages, or to any collateral or consequential damages ; nor is he entitled to damages in the rate of the contract as if completely performed by him ; but the true measure of damages, whether in equity or law, is the actual value of the contract *per se*, and the actual loss of its non-performance.—(6 : 516.)

8. The Comptrollers and Auditors of the Treasury have no general authority to award damages as for tort, on contract broken ; their jurisdiction is confined to matters of account arising *ex contractu* or by operation of law.—(*Ibid.*)

9. When a commissioned officer or other agent of the United States makes a contract with any person for their use and benefit, and with due authority of law, such officer or other public agent is not responsible to the party, whose only remedy is against the government.—(7 : 88.)

10. But, in making contracts with any one claiming to act for the government, it is the duty of the party contracting to inquire as to the authority of such agent or officer ; without which it is doubtful whether the contract affects the government.—(*Ibid.*)

11. If a public officer, however, make a government contract without authority, and which therefore does not bind the government, such officer is himself personally responsible to the contracting party.—(*Ibid.*)

12. But a public officer or other agent, though contracting for the government, may, if he see fit, make himself the responsible party, either exclusively or in addition to the government.—(*Ibid.*)

13. Damages on the rescission of a mail contract by the Postmaster General cannot be allowed beyond the actual loss to the party.—(7 : 286.)

14. In the case of a post office contract, cancelled by the Postmaster General, it is in the option of the other party to take the one month's extra allowance provided by the contract, or to claim damages at large ; but if he elect to accept the former, that is a legal waiver of the latter.—(7 : 487.)

15. Where a mail steamship company were bound by law, out of sums of money coming due to it from the government for mail service, to refund, with interest, certain advances made to the company, and by reason of the failure of Congress to make appropriations for the

service, the government was in default to the company: *Held*, that the latter was not bound to pay interest during the period of such default.—(7 : 535.)

16. The provision of the act of Congress of March 3, 1855, allowing additional compensation to Giddings on a mail contract, does not require payment to him individually unless due to him ; it is additional on the contract only so far as performed.—(7 : 617.)

17. That addition does not affect any previous contract with other parties on the same route. They are to be paid according to the general law.—(*Ibid.*)

18. The acceptance by a mail contractor, on the rescission of his contract by the Postmaster General, of the month's extra compensation stipulated for such case in the contract, is a waiver of all claim for other damages.—(7 : 644.)

CONVICT.

1. District courts of the United States have power to provide specially for the confinement of persons convicted by federal law, if refused admission into the jails of the State.—(7: 615.)

2. In such case, the prisoner may be confined in the penitentiary of the District of Columbia.—(*Ibid.*)

COPYRIGHT.

1. A copy of a book may be deposited with the Secretary of State after six months from the time of its publication, if not done before, and it will avail from the time of such deposit.—(1: 532.)

2. A treaty, constitutionally concluded and ratified, abrogates whatever law of any one of the States may be inconsistent therewith.—(2: 291.)

3. *Semble*, a treaty, assuming it to be made conformably to the Constitution in substance and form, has the effect, under the general doctrine that “*leges posteriores priores contrarias abrogant*,” of repealing all pre-existing federal law in conflict with it, whether unwritten, as law of nations or admiralty, or written, as legislative statutes.—(*Ibid.*)

4. At any rate, if the effect of a treaty on existing statutes admit of doubt, Congress never has failed to pass the acts requisite to give effect to any treaty not containing provisions incompatible with the Constitution.—(*Ibid.*)

5. Such provisions of the proposed convention between the United States and Great Britain, on the subject of copyright, as are inconsistent with existing provisions of acts of Congress, either abrogate the latter, or, if not, on the ratification of the convention they will be repealed by Congress.—(*Ibid.*)

6. An artist, employed by the United States to engrave a chart prepared by an officer of the army, has no pretence of right of copy in the engraved plates or impressions.—(7: 656.)

CORONER.

1. The fees of inquests *super visum corporis* in the county and city of Washington are to be paid out of the goods and chattels of the deceased.—(6: 561.)

2. In default of such goods, said fees are a charge on the county, to be defrayed by the levy court, and are not lawfully payable by the United States.—(*Ibid.*)

CORPORATIONS.

1. Judgments by default against corporate bodies are regulated by the practice of the several States in such cases.—(1: 258.)

2. The provisions in the act of Congress relative to public debtors do not reach the case of corporate bodies.—(*Ibid.*)

3. It is not competent for a bank with an ordinary charter to set apart by deed, not under seal, lands, so as to exempt them from execution for the debts of the bank. The principle that a corporation can grant only by its seal, is of universal application, and applies as well to the case of a grant to the United States as to an individual.—(1: 572.)

4. The resolutions of the Bank of Vincennes, by which the debtors of the bank were permitted to discharge their debts by a transfer of the stock of the bank, render such transfers a nullity, and leave such debts still due, and a part of the fund to which the creditors of the bank have yet a right to look for satisfaction of their claims.—(2: 58.)

5. Where a large amount of public money which had been deposited in the Bank of Vincennes was placed in jeopardy through the gross negligence of its officers: *Held*, that the best remedy was a bill in equity, to be filed in the name of the United States against the individuals who were the president and directors of the bank in the years 1819, 1820, and 1821, and such of the stockholders during these years as appear to have had any instrumentality in perpetuating this wrong on the United States, or who have benefited by the wrong of others; and, also, against such debtors of the Bank of Vincennes as may have taken advantage of the resolution to pay off their debts in the stock of the bank.—(*Ibid.*)

6. It is a familiar rule in the law of corporations that those bodies have no other powers than such as are either expressly granted or necessarily implied in the acts creating them.—(2: 665.)

7. Congress has not granted to the Baltimore and Ohio Railroad Company the right to pass through the public reservations in the city of Washington, the same not being included in the "other squares and lots" in the city.—(2: 715.)

COSTS.

1. The expenses of arrest of a vessel for cruising against belligerent powers, and which has been discharged by the President, should be paid by the owner, and be made a condition of the delivery; and the owner should withdraw his suit before indulgence is granted.—(1 : 48.)

2. The costs denounced against defendants by the concluding sentence of the first section of the act of 1795 were designed as a punishment for the failure of such defendants to comply with the requisition accompanying the notification of the Comptroller. Defendants who have the ultimate decision of the court in their favor are not liable to costs by force of the said act, unless in suits which have been commenced against them in conformity with the provisions thereof.—(2 : 301.)

3. The United States are liable to clerks of circuit courts for their fees, properly chargeable to plaintiffs, in suits in which the United States are plaintiffs, and the accounting officers may allow them, even though marshals may have collected them of defendants and have not paid them over.—(3 : 575.)

4. In such cases the United States have recourse against marshals on their official bonds.—(*Ibid.*)

5. The costs of suits instituted against postmasters and their bail, for debts and penalties, are payable out of the post office funds, and not out of the judiciary fund. It is different, however, with costs incurred in criminal prosecutions.—(4 : 328.)

6. The costs incurred in libelling, in the district court of Massachusetts, the brig Malaga, sent in as a prize on a charge of participating in the slave trade, are properly chargeable to the appropriation for defraying the expenses of the courts of the United States, and likewise for defraying the expenses of suits in which the United States are concerned, and for prosecution for offences committed against the United States.—(4 : 365.)

7. The allowance of the costs of prosecution, where the United States are concerned, does not depend upon the result of the proceedings.—(*Ibid.*)

8. In suits against officers of the navy for personal injuries inflicted by them under color of office, in which the government of the United

States have no pecuniary interest, the officers should be left to their defence, and to bear the costs, each, of their own defence, without any contribution whatever from the department.—(5 : 397.)

9. Where the suit is against the officer as a nominal party, the government being substantially interested and bound ultimately to indemnify the officer in case of recovery against him, the proper course would be for the district attorney to cause the suit, if commenced in a State court, to be removed into the proper court of the United States, there to be defended by him.—(*Ibid.*)

10. The Secretary of the Treasury is authorized to accept the payment of costs *nunc pro tunc* in order to discharge the obligations of certain sureties.—(5 : 744.)

11. The fees of inquests *super visum corporis* in the county and city of Washington are to be paid out of the goods and chattels of the deceased.—(6 : 561.)

12. In default of such goods, said fees are a charge on the county, to be defrayed by the levy court, and are not lawfully payable by the United States.—(*Ibid.*)¹

¹The United States are not liable for costs.—(*United States v. Boyd*, 5 How. 29. *The Antelope*, 12 Wheat. 546.)

COUNSEL.

1. Any head of department may in his discretion employ special counsel in behalf of the government.—(7: 141.)

2. In a question of conflict of jurisdiction between a district court of the United States and the supreme court of a State, which question arises on a writ of *habeas corpus ad subjiciendum* issued by the latter, to inquire into the legality of the detention of a prisoner by the marshal on the order of the former, it is proper for the Executive of the United States to allow counsel to the marshal, leaving the case otherwise to the regular course of judicial determination, until the question be duly determined by the Supreme Court of the United States.—(7: 482.)

3. Counsel retained by the United States for a given professional duty may be lawfully paid therefor, in whole or in part, before or during its performance, and in anticipation of its absolute completion.—(7: 686.)

COURTS.

- I. GENERALLY.
 - II. COURTS OF THE UNITED STATES.
 - III. JURISDICTION.
 - IV. COURTS-MARTIAL.
 - V. FOREIGN COURTS.
-

I.—GENERALLY.

1. A decision of the circuit court of Georgia upon a claim of the marshal of that State for supporting negroes taken from a vessel brought in for adjudication, under the laws prohibiting the slave trade, is not binding on the Executive Department, so as to make it the duty of that department to pass an account which it considers unreasonable and unjust.—(1: 635.)

2. The judiciary cannot enjoin the Executive from any duty specially devolved on it by the legislative branch of the government, or by the Constitution of the United States. Yet there are cases in which the courts will be found a useful auxiliary to the execution and promotion of the purposes of justice.—(1: 681.)

3. The orphans' court of the county of Washington has power to grant letters of administration in respect to assets existing in the county, and payments made by the Treasury Department, to an administrator thus appointed, are regular; yet, in a case where the decedent resided in Baltimore, and left a will appointing an executor there, and letters granting administration *de bonis non* are afterwards granted in Maryland upon the same estate, the letters issued in Washington become subordinate to them.—(3: 89.)

4. The circuit court of the District of Columbia is not invested with authority to issue a mandamus against the Postmaster General to compel him to execute an act of Congress in a particular way.—(3: 236.)

5. Alexander, a post office agent, was sued in Georgia for damages

for a malicious prosecution, and sought to have the cause removed to the federal courts, on the ground that he was a federal officer: *Held*, that his being an agent in the employment of the Post Office Department did not give the right; but if he were a citizen of a State other than Georgia, his case would have been provided for by acts of Congress.—(4: 300.)

6. The act of the legislature of the Territory of New Mexico, appointing semi-annual terms of the district courts, is valid; it being clearly consistent with that provision of the organic act authorizing courts to be held at such "time and place" as may be prescribed.—(5: 528.)

7. Proceedings in the vice-admiralty court of St. Domingo are nullities, for the reason that the court is not legally constituted.—(5: 689.)

8. In the absence of any specific appropriations for the object, the expense of transporting prisoners held for trial by the authorities of the United States in China are a lawful charge on the general appropriations for defraying the judicial expenses of the government.—(6: 59.)

9. The courts of the United States are the rightful judges of their own jurisdiction.—(6: 103.)

10. The separation of an existing judicial district of the United States into parts does not take away the right to try offences previously committed in either subdivision of the district.—(*Ibid.*)

11. A judicial tribunal of the United States may have jurisdiction of crimes committed before its organization by Congress.—(*Ibid.*)

12. Laws which recognize or otherwise modify the judicial tribunals of the United States are not *ex post facto* laws within the scope of the prohibitory clause of the Constitution.—(*Ibid.*)

13. According to the 88th of the Articles of War, no person is liable to be tried and punished by a general court-martial for any offence which shall appear to have been committed more than two years before the issuing of the order for such trial, unless the person, by reason of having absented himself, or some other manifest impediment, shall not have been amenable to justice within that period.—(6: 239.)

14. This limitation cannot be waived by the accused, nor can he, even with his consent, be tried by a general court-martial ordered after the time prescribed by statute.—(*Ibid.*)

15. But this limitation does not apply to courts of inquiry; for the objects of a court of inquiry are not confined to investigation as preparatory to a court-martial, but extend to the legal procurement of

information of any sort material to the military service or the discipline and government of the army.—(*Ibid.*)

16. In virtue of the treaty between the United States and China, all citizens of the United States in China enjoy complete rights of extritoriality, and are amenable to no authority but that of the United States.—(7: 495.)

17. The act of Congress empowers the commissioners and consuls of the United States in China to exercise judicial authority over their fellow-citizens.—(*Ibid.*)

18. The several consuls, each in his consular circumscription, have, by express provision of statute, original jurisdiction in all civil cases of contract, or the like sounding in damages, which arise between two or more citizens of the United States, and in all crimes committed by an American.—(*Ibid.*)

19. In such civil matters of contract, or the like sounding in damages, the consul sits with or without assessors, according to circumstances; and in case of difference of opinion between him and his assessors, an appeal lies to the commissioner.—(*Ibid.*)

20. In all criminal matters, except certain petty misdemeanors, the consul sits with assessors, and decides, subject to appeal as in civil cases, to the commissioner; save that in capital cases there is no appeal, but the conviction is invalid unless approved by the commissioner.—(*Ibid.*)

21. In controversies between citizens of the United States and subjects of China, the case is to be tried by the court of the defendant's nation; and so in controversies between citizens of the United States and those of any friendly foreign government.—(*Ibid.*)

22. The consular court has no authority by the treaty or the statute to entertain jurisdiction of a suit by the Chinese government for duties.—(*Ibid.*)

23. In all criminal matters, and in all civil matters of contract or the like sounding in damages, the commissioner has only appellate jurisdiction.—(*Ibid.*)

24. As to all other matters, such as probate of wills, divorce, intestacy, copartnership, chancery, admiralty, proceedings *de re* or *in rem*, personal or prerogative writs, division of lands, and the like, the statute makes no specific provision, leaving them to regulations of the commissioner and consuls.—(*Ibid.*)

25. Vice-consuls are competent to act when duly appointed or approved as such by the Secretary of State.—(*Ibid.*)

II.—COURTS OF THE UNITED STATES.

1. Pirates are to be prosecuted in the circuit court of the United States, without regard to the nation they belong to.—(1: 85.)

2. Proceedings against a prize-ship are to be had in the district court of the United States.—(*Ibid.*)

3. Offenders against the United States may be arrested, imprisoned, or bailed, agreeably to the usual mode of process in a State, but can be tried only before the court of the United States having cognizance of the offence.—(*Ibid.*)

4. The provision in the Articles of War that “no officer, &c., shall be tried a second time for the same offence,” is borrowed from the common law, and is not held, either in civil or military tribunals, to preclude the accused from having a second trial on his own motion.—(1: 233.)

5. The plea *autre foits acquit*, or convict, is the privilege of the accused, which he may use or waive at pleasure; if he does not choose to use it, courts will not take notice of it so as to bar a trial.—(*Ibid.*)

6. The phrase “court of record,” is borrowed from the English law, and it is proper to look to that law for its meaning. According to that law, the mere fact of keeping a registry of its proceedings is not enough to make a court of record. In the United States a court of record is one expressly made so by the law of the State which creates it; or which has been expressly so adjudged by the tribunals of the State; or which proceeds according to the course of the common law, with a jurisdiction unlimited in point of amount, keeping a record of its proceedings; or which has the power of fine and imprisonment.—(1: 356.)

7. The United States have the same civil remedies at law that individuals have.—(1: 471.) See *Dugan vs. the United States*, 3 Wheat., 181.

8. A judge of the Supreme Court, residing in the fifth district, or a district judge of one of the districts of Virginia, may issue a warrant to arrest R. B. Randolph for the assault committed by him in the District of Columbia on the President of the United States, the said Randolph being in Virginia.—(2: 564.)

9. The power to arrest for any offence against the United States is given by the act of Congress in general terms; and so far as respects a judge or justice of the United States, it is not confined to his district or circuit, but his warrant will run throughout the United States.—(*Ibid.*)

10. The circuit courts of the United States have not the power to enjoin the Auditor of the Post Office Department from paying a contractor for carrying the mails, nor to enjoin the contractor from making collections from postmasters, according to his contract with the government.—(3 : 667.)

11. Where a person having Cherokee Indian blood in his veins, and living as a trader, by permission, within the limits of the Cherokee nation, west of the Mississippi river, who is at the same time recognized by law as a citizen of the State of Georgia, commits a crime, he is amenable to the laws of the United States, and entitled to a trial under them, instead of the laws enacted by the councils of the Cherokees.—(4 : 258.)

12. An appeal from a decree of the United States court for the district of Louisiana, under the acts of May 26, 1824, and June 17, 1844, for the adjustment of private land claims in Louisiana, must be prosecuted within a year from the time the decree was rendered ; therefore, where a decree, confirming to C. and G. certain lands was made, and an appeal was prayed, but not prosecuted within a year, as required, the decree has become final, and the parties are entitled to a patent for their land.—(U. S. *vs.* Curry *et al.*—6 How. 106. 5 : 475.)

13. Under the judiciary act of 1789, sec. 12, causes may be removed from State courts to the courts of the United States, where the matter in dispute exceeds five hundred dollars, and the suit is brought against an alien, or by a citizen of a State in which the suit is brought against the citizen of another State.—(5 : 504)

14. If in the action, commenced in the State court of Virginia against the officer at Fort Monroe, the *ad damnum* be less than \$500, and the officer himself be a citizen of Virginia, where the plaintiff resides, then, inasmuch as great interests are depending, an amendment to the act of 1789, is recommended, so that a removal of the suit may be had to the United States court.—(*Ibid.*)

15. The circuit and district courts of the District of Columbia are circuit and district courts of the United States within the meaning of section 167 of act 18th May, 1842, and the clerk thereof is required to return a semi-annual account of his fees and emoluments ; but said clerk as *ex officio* clerk of the criminal court of said District is not required to make such return for the criminal court.—(5 : 678.)

16. It is recommended to have, at present, nine, and prospectively, ten circuits ; to re-arrange the existing nine circuits, so as to comprehend within them all the judicial districts except those of California ;

to appoint nine assistant circuit judges, one for each circuit; to preserve unimpaired the jurisdiction of the circuit courts, in all the districts, as well those now within the circuits as those without; to withdraw the circuit powers from the district judges, and revest them in the proper circuit court exclusively; to have the ordinary circuit court holden as it is in each judicial district, and composed of the justice of the Supreme Court residing in the circuit, as now, but to associate with him an assistant circuit judge, so that the court shall be holden by a justice of the Supreme Court and the assistant circuit judge, or either of them, instead of the district judge, the latter being left to his proper district duties, and there being a real and effective circuit court even in case of the necessary occasional absence of the justice of the Supreme Court.—(6: 271.)

17. The clerk of the circuit court of the District of Columbia, who is also clerk of the criminal court of the District, is bound to account to the treasury for the fees which he receives in the latter capacity.—(6: 388.)

18. The clerks of the district courts of the United States in California are bound to render to the treasury an emolument account equally with clerks of other districts.—(6: 433.)

19. The Secretary of the Interior is empowered by law to judge of the necessity of expenses of clerk hire and other expenses in the office of clerks of circuit and district courts where there is a surplus of fees above the statute allowance for salary, and to regulate the same in advance, subject to such modifications of amount, either by enlargement or diminution, and either periodical or occasional, as the satisfactory administration of justice in the several circuits or districts may require.—(7: 543.)

20. The clerk of the courts of the United States in the District of Columbia is a collecting agent of the government, and is held to account for all the fees of his office received or receivable, deducting therefrom the maximum allowed him by law.—(7: 610.)

III.—JURISDICTION.

1. The refusal of a district judge to issue a warrant under the ninth article of the convention between France and the United States, cannot be interfered with by the Supreme Court; the power of the district judge in such case being discretionary.—(1: 55.)

2. District judges are not the exclusive judges of their own jurisdiction. If the Supreme Court be of the opinion that they have jurisdiction, they must conform to its judgment.—(1: 56.)

3. The *high seas* are within the jurisdiction of the district and circuit courts of the United States; and if American citizens violate the neutrality laws thereon, such courts will take notice of the offence in any district where the offenders may be found.—(1: 57.)

4. Such offence being committed out of the territories of the United States, cannot be noticed by our courts; the offenders must be dealt with abroad, and, after proclamation by the President, will have forfeited all protection from the American government.—(*Ibid.*)

5. The treaty with Spain does not extend the jurisdiction of our courts to offences committed in Spain, nor *vice versa*; and, according to the common law, the commandant of the island of Amelia is not liable to any public prosecution before any of our courts for his transactions in Florida.—(1: 68.)

6. Pirates are to be prosecuted in the circuit court of the United States without regard to the nation they belong to.—(1: 85.)

7. There is no provision of law concerning intercourse with the Indian tribes, or conferring jurisdiction upon courts, which can enable the United States to maintain a civil action against a debtor residing in the Indian country, upon a contract or indebtedness created in the States.—(3: 514.)

8. The district court of Iowa has jurisdiction over Fort Atkinson, in the Indian country; and it will require a very clear case to justify the military authorities in resisting the mandate of the judiciary.—(4: 119.)

9. Where a person having Cherokee Indian blood in his veins, and living as a trader by permission, within the limits of the Cherokee nation west of the Mississippi river, who is at the same time recognized by law as a citizen of the State of Georgia, commits a crime, he is amenable to the laws of the United States, and entitled to a trial under them, instead of the laws enacted by the councils of the Cherokees.—(4: 258.)

10. The courts of the United States have no authority to try a captain of a Georgia battalion of infantry on the charge of murder, alleged to have been committed by him on the person of Lieutenant Goff, of the Pennsylvania volunteers, at Perote, in Mexico, whilst that place was occupied by American troops, and under the authority of a military governor appointed by General Scott.—(5: 55.)

11. The United States have no common law respecting crimes; no unwritten criminal code; nor have their courts jurisdiction except that conferred by acts of Congress, which do not confer jurisdiction over crimes committed in Mexico.—(*Ibid.*)

12. James Collier, being indicted in the district court of the northern district of California, on the charge of feloniously converting to his own use public money, intrusted to him as collector of San Francisco, and being arrested in the State of Ohio by warrant of the district judge of the United States in order to be carried to California for trial, 'was taken from the United States marshal by *habeas corpus ad subjiciendum* granted by a judge of the State of Ohio: *Held*, that the act of the State court was an act of unlawful interference with the jurisdiction of the courts of the United States.—(6 : 103.)

13. When a party is lawfully in custody under the judicial authority having apparent jurisdiction of the subject-matter, no other court is collaterally to take jurisdiction of the case under cover of the writ of *habeas corpus ad subjiciendum*, even as between courts of the same sovereignty or jurisdiction.—(*Ibid.*)

14. *A fortiori*, a prisoner cannot be withdrawn from the jurisdiction of a State by *habeas corpus* issued by the courts of the United States, nor from that of the United States by *habeas corpus* issued by the courts of a State. — (*Ibid.*)

15. The courts of the United States are the rightful judges of their own jurisdiction.—(*Ibid.*)

16. An officer or soldier of the army, who does an act criminal both by the military and the general law, is subject to be tried by the latter in preference to the former, under certain conditions and limitations.—(6 : 413.)

17. But his conviction or acquittal, by the civil authorities, of the offence against the general law, does not discharge him from responsibility for the military offence involved in the same facts.—(*Ibid.*)

18. An officer may be tried by court-martial for the military relation of an act, after having been tried by the civil authorities for the civil relations of the same act.—(6 : 506.)

19. A person having been indicted and convicted on trial before the district court of the United States for the State of Wisconsin, for the forcible rescue of a fugitive from service in another State, who had been arrested by due process preparatory to extradition; and he having, after conviction, been released by the supreme court of the State on *habeas corpus*: *Held*, that the action of the tribunals of the State was unlawful, and should be brought for review, by writ of error, before the Supreme Court of the United States.—(7 : 51.)

20. Rafael and Manuel Armijo sued out, in the territorial court of New Mexico, process of injunction and mandamus against the governor, as superintendent of Indian affairs, to compel him, out of the

general moneys of the government in his hands, as such, to pay to the petitioners indemnity for losses suffered by them through the depredations of the Apaches: *Held*, that the courts have no jurisdiction or authority over such moneys of the government in the hands of the superintendent, either by injunction, mandamus, or any other process of law.—(7: 80.)

21. A white man, although he may have been adopted by Chickasaws or Choctaws, does not become subject in criminal matters to the jurisdiction of the courts of the Choctaw nation.—(7: 174.)

22. But, in matters of civil jurisdiction, arising within the nation, its courts have jurisdiction over a white man who has voluntarily made himself a Chickasaw by intermarriage and exercise of all the rights of a Chickasaw, and where the question concerns property the proceeds of a head-right granted to him as a Chickasaw —(*Ibid.*)

IV.—COURTS-MARTIAL.

1. The 35th article of army rules makes it imperative on a commanding officer, when complaint is made by an inferior officer or soldier, to summon a regimental court-martial on the case. The only authority of such court is to decide on the justice or injustice of the complaint. If further redress be proper, a general court-martial must be called. The rules and practice of a court of inquiry should govern such proceedings.—(1: 166.)

2. Courts-martial of marine officers stationed on shore, and convened under the articles of war, may try and sentence to suffer corporal punishment marines who have deserted from the public ships.—(1: 187.)

3. The President has power to order a new trial before a court-martial, where, in his opinion, the court erred in the first trial in excluding proper evidence.—(1: 233.)

4. It is error for a court-martial to refuse a second trial to the accused when the same has been ordered by the President.—(*Ibid.*)

5. The plea of *autre fois acquit*, or convict, is the privilege of the accused, which he may use or waive at pleasure.—(*Ibid.*)

6. Cadets form a part of the land forces of the United States, and have been constitutionally subjected by Congress to trials by court-martial.—(1: 276.)

7. A plea before a court-martial of a former arrest and discharge is bad; a former trial only is a defence under the 87th article of the rules and articles of war.—(1: 294.)

8. As to the perspicuity and precision of the charges, if the descrip

tion of the offence is sufficiently clear to inform the accused of the military offence for which he is to be tried, and to enable him to prepare his defence, it is sufficient.—(*Ibid.*)

9. Courts-martial have the power to reconsider any judgment and sentence rendered by them during the term or sitting, and to change the judgment and sentence, even to death, where the former imposed only imprisonment. But the execution of a sentence of death is murder, unless the court pronouncing it consisted of thirteen commissioned officers, where that number could have been convened without manifest injury to the service.—(1: 297.)

10. No sentence of a naval court-martial held within the United States can be executed until confirmed by the commander of the fleet in which the offence occurred, or by the officer ordering the court.—(1: 309.)

11. Courts-martial did not have jurisdiction over cases of disobedience of the governor of New York, concerning the quota of ninety-three thousand men which he was invited to raise by the circular from the War Department of July 4, 1814, for the reason that it was no violation of any existing law of the United States, nor of the orders of the President.—(1: 473.)

12. Where a court-martial has been ordered, and the names of the officers and supernumeraries to compose it are set forth in the warrant, and by reason of the non-attendance of one of the officers on the first day, a supernumerary takes his place, and the court thus organized proceeds to business, the absent member cannot properly thereafter be added to the court, upon his arrival, until the case on trial has been disposed of, if at all; yet if the practice has been otherwise and has been acquiesced in, it may be safely followed.—(1: 698.)

13. The judge advocate has the right of a reply in a military trial, and so has the accuser when acting as prosecutor; but such reply ought to be a commentary on the evidence introduced by the prisoner, and on his remarks in enforcing it. No new matter should be introduced at this stage of the trial without special leave; and then the prisoner should also have leave to rejoin.—(2: 287.)

14. A sentence of "dismissal" is legal.—(*Ibid.*)

15. The power of the President over a sentence is a power over the whole of it; and he may approve, reject, or mitigate the same at pleasure.—(*Ibid.*)

16. Where the warrant of a court-martial, though general, is accompanied with a specification of persons to be tried with a reference to

the charges against them, the court need not be re-sworn on the trial of each successive case.—(2: 297.)

17. Dismission from the United States squadron is a legitimate punishment for a court-martial to pronounce.—(*Ibid.*)

18. Chaplains, surgeons, and pursers, being non-combatant officers, are not competent to officiate as members of naval courts-martial.—(*Ibid.*)

19. By the 63d article of the rules and articles of war, a court-martial, to try a lieutenant performing duty on shore, should be composed of officers of the army and of the marine corps.—(2: 311.)

20. It is not proper to introduce depositions in courts-martial, except under certain restrictions, in cases not capital. Such courts should adhere to the rules of evidence established in common law courts of criminal jurisdiction.—(2: 344.)

21. It is irregular for a member of a court-martial who has been absent during a portion of the trial, and who therefore did not hear the witnesses testify, to take part in sentencing the accused.—(2: 414.)

22. If it has been the usage, since the opinion given November 6, 1829, (ante 16,) for members of courts-martial to take the oath but once, and the practice has been sanctioned by the government, it has been a sufficient evidence of the construction of the law by the authority competent to expound it.—(2: 460.)

23. Sentences of naval courts-martial, which are organized with only five members, are not on that account invalid.—(2: 534.)

24. The discretion vested in officers appointing courts-martial being merely directory to the officers appointing the court, their determinations whether more than five members can be convened without manifest injury to the service are conclusive.—(*Ibid.*)

25. Courts-martial may receive testimony, *after* a plea of guilty, showing the degree and character of the offence, if the punishment is discretionary.—(2: 636.)

26. The judge advocate of a court-martial is required to be sworn; and if the proceedings of the court do not show that he was sworn, it is to be presumed that he was not, and the proceedings may be regarded as irregular and void.—(3: 396.)

27. In such cases the accused may be put upon another trial; but not before the same officers who constituted the first court.—(*Ibid.*)

28. The Executive will not set aside proceedings of courts-martial merely because they have admitted the testimony of negroes or made other mistakes, though objected to, where it appears, upon the

whole case that justice has been done and that the verdict is substantially right.—(3 : 523.)

29. It is a fatal error in proceedings before courts-martial for the president of the court to omit to administer an oath or affirmation to the judge advocate before proceeding to trial.—(3 : 544.)

30. It is error in proceedings before courts-martial to receive evidence after the court has been cleared for deliberation.—(3 : 545.)

31. In the case under consideration, where the jurisdiction of the court was called into question on account of the early date of the enlistment, the record ought to have contained authentic evidence of the terms and period of the enlistment, that the revising officer might judge whether or not the court had jurisdiction.—(*Ibid.*)

32. It is not sufficient to return the inferences or conclusions of courts-martial, nor mere statements of the evidence, or books or papers inspected ; but the evidence itself on which they based judgment must be returned.—(*Ibid.*)

33. Where a naval court-martial tried a master-at-arms for desertion, on a charge headed with a caption styling the accused “ master-at-arms,” and discharged him on the ground that, since his arrest, he had not been borne on the ship’s books as such, and that the charge could not at that stage of the trial be revised : *Held*, that the decision was erroneous, there being no ground for the court to refuse to proceed to judgment on the merits.—(3 : 548.)

34. The sentence pronounced by the court-martial in the case of Lieutenant Whitney is not illegal nor unconstitutional, though it is, under the circumstances of the case, severe and harsh.—(3 : 631.)

35. The plea of *autrefois acquit*, averring a former trial and acquittal for manslaughter in the supreme court of a State, and that said charge was sustained only by the same evidence as must be used to sustain the charge for violating the eighty-eighth article of the Rules and Articles of War, is not a bar to the proceedings to punish unofficer-like and ungentleman-like conduct.—(3 : 749.)

36. Whether, under the 88th article of the Rules and Articles of War, the accused can be brought to trial before the court-martial, which, two years before, had issued an order for his trial, and suspended its execution under peculiar circumstances, *quere*.—(*Ibid.*)

37. Whether a member of a court-martial, who participated in the proceedings of the same at the commencement of its sitting, but who, from sickness, had been unable to attend during the trial of the whole case, could afterwards, on recovering his health, resume his seat again

as a member of the court without a new precept issued, should be decided according to the settled practice in such cases.—(4: 7.)

38. If, during the pendency of a trial before a court-martial, one of its members fall sick, and be thereby disabled from sitting with the court for several days, the remaining members may adjourn the court from day to day, until he is able to attend with them again to complete the trial.—(4: 17.)

39. Commodore Barron was tried by a competent court, whose sentence was approved by the President. After the lapse of thirty-five years the Executive will not look into the particulars of the trial on an allegation that it was irregular. If there were irregularities in the trial, they should have been alleged before the sentence was confirmed.—(4: 170.)

40. A sentence of dismissal from service, approved by the President, cannot be annulled. The officer dismissed can be restored only by a new nomination by the President, the confirmation of the Senate, and all the requisites to constitute an original appointment to office.—(4: 274.)

41. Even though the proceedings of the court-martial were irregular, if the sentence of dismissal were pronounced, approved, and carried into effect, there is no means of reviewing it.—(*Ibid.*)

42. Specifications of charge known to the Secretary of the Navy, by whom a naval court-martial was ordered, when former charges against the accused were prepared by him before another and a distinct court, upon a different and distinct matter, may be tried before a subsequent court-martial, together with other charges not previously known.—(4: 410.)

43. The inhibitions contained in the 38th article of the Rules and Regulations for the government of the navy apply only to courts-martial ordered on the application of persons other than the Secretary himself.—(*Ibid.*)

44. In 1832, an officer of the marine corps was tried by a court-martial and sentenced to be cashiered, but the sentence was commuted to suspension for a limited period. In 1833, he was appointed a lieutenant in the army: *Held*, that after the lapse of sixteen years his case cannot be examined with reference to the competency of the court-martial by which he was tried.—(5: 384.)

45. The Secretary of the Navy has power to approve the sentence of a court-martial convened by him, where the sentence of the court does not extend to loss of life, or to the dismissal of a commissioned or warrant officer.—(5: 508.)

46. The Secretary of the Navy is an "officer" within the meaning of the act of 23d April, 1800.—(*Ibid.*)

47. Naval courts-martial may not try and punish murder which they suppose to have been committed on board a frigate at Norfolk. Jurisdiction, in such cases, belongs to the civil tribunals.—(5 : 698.)

48. A sergeant of marines being accused of larceny, at Gosport, Virginia, and doubt arising as to the jurisdiction of the civil courts over the offence, proceedings by court-martial are recommended.—(5 : 705.)

49. Whether a naval court-martial may try a lieutenant colonel of the marine corps? *Query*.—(5 : 706.)

50. It is the right of an officer of the marine corps to be tried according to the true directions of the law ; and he may raise objections to the jurisdiction of the court appointed to try him.—(*Ibid.*)

51. A general, commanding the forces of the United States in the field, does not possess power to commute the sentence of cashiering, pronounced by a court-martial, but only the power to execute the sentence, or to suspend it and take the direction of the President.—(6 : 123.)

52. A sentence of suspension merely by a naval court-martial does not deprive the party of pay and emoluments.—(6 : 200.)

53. It is in the power of the Secretary, or other authority appointing a court-martial, to order the case back for revision, both in the army and navy.

But this must be done before the court has actually been dissolved.—(*Ibid.*)

54. After the sentence of a court-martial dismissing an officer has been approved and acted on by the President, it cannot be revised except for suggestion of absolute nullity in the proceedings.—(6 : 369.)

55. Objection to a naval court-martial because consisting of only nine members, must be taken during the trial, as only involving the question of fact whether a greater number of officers could have been detailed without injury to the service, and not being a ground of nullity.—(*Ibid.*)

56. After sentence of an officer of the army by a court having jurisdiction has been approved and executed by one President, it cannot be revised by his successor.—(6 : 506.)

57. The number of persons detailed to constitute a court-martial, provided it do not fall below the minimum of five, prescribed by statute, is a matter of discretion within the lawful authority of the officers appointing the court.—(*Ibid.*)

58. An officer may be tried by court-martial for the military relation of an act, after having been tried by the civil authorities for the civil relations of the same act.—(*Ibid.*)

59. A prosecution of an officer before court-martial having been instituted, and the party arraigned within the two years required by law, and he pleading the pendency of civil proceedings arising in the matter, whereupon the proceedings of the court-martial were suspended until a period after the lapse of the two years: *Held*, that the statute of limitation could not then be pleaded in the case.—(*Ibid.*)

60. Upon certain charges Captain S. W. Downing, of the navy, was tried by court-martial, and sentenced to be dismissed; which sentence was approved by the President, and duly carried into effect by the Secretary of the Navy.

After this, Captain Downing, in a communication to the Secretary of the Navy, claimed that the proceedings in the case were illegal and void, because of the following facts:

The court was composed of thirteen members, six of whom were junior in rank to Captain Downing, and six of them senior to him, exclusive of the president, who was also his senior. During the trial, Captain Forrest, one of the members of the court, was absent two days, by reason of sickness. On his reappearing to resume his seat, it was decided by the court that he could not do so, and the case proceeded to conclusion without the further presence of Captain Forrest: *Held*, the dismissal is a consummated fact, whether the sentence was lawful or not; and if the party be restored to the service, it can only be by renomination to the Senate, and reappointment.—(7: 98.)

61. In the present stage of the case, no question on the proceedings of the court can be raised, save that of nullity of sentence for want of jurisdiction.—(*Ibid.*)

62. It is doubtful whether the court had lawful authority to exclude Captain Forrest under the circumstances stated.

But his exclusion does not affect the proceedings of the court with nullity, and, if it were an irregularity, should have been taken advantage of before the sentence, or, at least, before the approval of the sentence by the President.—(*Ibid.*)

63. The cadets of the Military Academy at West Point appertain by law to the corps of engineers, are therefore a part of the land force of the United States, and as such are subject to the rules and articles of war.—(7: 323.)

64. The under-graduate cadets are not commissioned officers, and

therefore are not competent to sit on a court-martial, and are triable by a regimental or garrison court-martial.—(*Ibid.*)

65. But they are not “non-commissioned” officers of the acts of Congress and the general regulations, which expression means “sergeants and corporals,” and is inapplicable to the cadets.—(*Ibid.*)

66. They are inchoate officers of the army, and subject by statute and regulation to no discipline incompatible with that character.—(*Ibid.*)

67. The under-graduate cadets, in their internal academic organization as officers, non-commissioned officers, and privates, are not subject to the articles of war as respects their relation to one another, but only as respects their relation to commissioned officers of the army on duty as such in the academy.—(*Ibid.*)

68. The graduated cadets, assigned to service as supernumerary officers, are brevet second lieutenants, and as such commissioned officers, and therefore subject to all the duties, and entitled to exercise all the powers of that grade, including the legal capacity to sit on courts-martial as commissioned officers, and be tried only as such, according to the articles of war.—(*Ibid.*)

69. Where a general court-martial, duly organized by order of the Secretary of War, was, after report, required by him to reassemble to revise its sentence, and on reassembling two of the original members were absent for whatever cause, but a legal quorum of the court still remained: *Held*, that the absence of the two members at the reassembling of the court did not impair its jurisdiction, or otherwise affect its power to revise the sentence; and that it still was the same continuous and competent court as when it first assembled under the order of the Secretary.—(7: 338.)

70. A specification of charge is good, and will support the finding and sentence upon it, with or without descriptive designation of the quality of the imputed criminal act, provided it appear that the facts alleged and proved constitute, in any point of view, the offence charged.—(7: 601.)

V.—FOREIGN COURTS.

1. A nation ought not to interfere in the causes of its citizens brought before foreign tribunals, except in the case of a refusal of justice, or of palpable injustice.—(1: 53.)

2. The opinion of a British judge directing a plaintiff who had been a British subject, but who had taken the oath of allegiance to the United States, to be nonsuited on the ground that the contract which

formed the subject-matter of the suit was unlawful between British subjects, and regarding the plaintiff as such, is founded on the ancient and standing laws of Great Britain, which can be altered only by the legislative power of the nation.—(*Ibid.*)

3. When a suitor applies to foreign tribunals for justice, he must submit to the rules by which those tribunals are governed.—(*Ibid.*)

4. For the recovery of their property in Florida, and for redress of injuries done there, our citizens must apply to the tribunals of that province.—(1 : 68.)

CONSTITUTIONAL LAW.

1. The act of South Carolina, authorizing the seizure and imprisonment of persons of color who may come into any of her ports from any other State or any foreign port, until the vessel to which they may be attached shall depart, is void, as being against the Constitution, treaties, and laws of the United States, and is incompatible with the rights of all nations in amity with them.—(1 : 659.)

2. By the national Constitution, the power of regulating commerce with foreign nations and among the States is given to Congress ; and this power is, from its nature, exclusive. It is the power of prescribing the terms on which the intercourse between foreign nations and the United States, and between the several States of the Union, shall be carried on. Congress has exercised this power ; and among those terms there is no requisition that the vessels permitted to enter the ports of the several States shall be navigated wholly by white men. All foreign and domestic vessels complying with the requisitions prescribed by Congress have a right to enter any port of the United States, and a right to remain there, unmolested in vessel or crew, for the peaceful purposes of commerce.—(*Ibid.*)

3. The act of South Carolina, called the port or police bill, authorizing the seizure and detention of free persons of color within the limits of that State, having for its object the regulation and government of free persons of color within the limits of that State, as strictly belongs to her internal police as a law regulating the course of descents, or one defining the crime of murder and prescribing the penalty which shall attach to its commission, and is valid. If there be laws of the United States passed in the exercise of the right to regulate commerce, they cannot control the exercise of this reserved power, except so far as they may be necessary to the preservation of the commerce of the Union.—(2 : 427.)

CONSTRUCTION.

1. Acts of Congress containing no provision as to the time when they shall take effect, go into effect upon their receiving the approbation of the President.—(3 : 82.)

2. In general, the law does not notice fractions of a day ; yet where questions of right, growing out of deeds, judgments, and other instruments bearing the same date, are concerned, the precise time of approval may be inquired into, to prevent laws from operating retrospectively.—(*Ibid.*)

3. Whenever an act of Congress has by actual decision, or by continued usage and practice, received a construction at the proper department, and that construction has been acted on for a succession of years, it must be a strong and palpable case of error and injustice to justify a change in the interpretation to be given to it.—(2 : 558.)

4. The joint resolution of Massachusetts, approved by the governor of that State on the 9th of April, 1836, is not such a law as is contemplated by the 13th section of the act of 23d June, 1836, to regulate the deposits of the public money.—(3 : 166.)

CRIMES.

1. It is a misdemeanor to plot and combine to disturb the peace and tranquillity of the United States, and to draw them into a war with a foreign nation.—(1 : 75.)

2. It is treason for a citizen or other person not commissioned, within the United States, to abet France during a maritime war with her.—(1 : 84.)

3. The authority of our government to take, forcibly detain in custody, and bring to this country from Europe, a person charged with barratry on private property is doubtful. The offender, if he were here, would be amenable to our courts.—(1 : 123.)

4. If there is no evidence of criminal intention, a person should not be detained as a spy.—(1 : 172)

5. Offenders against naval laws are kept in the custody of the naval service.—(1 : 172.)

6. Punishment by court-martial of offences committed on board of letters-of-marque is contemplated only when such offences are committed without the jurisdiction of the United States.—(1 : 177.)

7. No statute makes it a specific offence to cut timber from the public lands, (1816.)—(1 : 194.)

(See *Lands*.)

8. Fraud by forgery, perjury, subornation of perjury, and the corruption of a justice of the peace, is not an offence punishable under the laws of the United States. Yet perjury committed in depositions taken pursuant to the laws of the United States is punishable.—(1 : 209.)

9. Offenders committed to prison in a district other than that in which the offence is to be tried may be removed to the latter to be tried by a warrant of the judge of the district where they are imprisoned.—(1 : 404.)

10. Prosecutions for false swearing may be sustained in the courts of the United States against persons who shall have made false affidavits or affirmations before judicial officers of the United States or State, or State officers generally authorized to administer oaths, for the purpose of supporting claims, although the particular law under which the claims are made are silent on the subject.—(2 : 700.)

11. The sentence of the Indian See-see-sah-ma having been commuted to imprisonment for life in the penitentiary, he stands in precisely the same legal condition as if he had been sentenced by the court to imprisonment for life in the penitentiary of the State of Missouri.—(5 : 370.)

12. It is not perjury to swear falsely in the case of an affidavit illegally prescribed by the Commissioner of the General Land Office.—(5 : 609.)

13. The fraudulent taking of copies of invoices, manifests, bills of lading, letters, and a deposition, from the possession of a clerk in the Department of State, who had charge of the papers of the late Board of Commissioners for adjusting claims of citizens of the United States against Mexico, does not seem to come within any law for the punishment of crime.—(5 : 523.)

14. The separation of an existing judicial district of the United States into parts does not take away the right to try offences previously committed in either subdivision of the district.—(6 : 103.)

15. A judicial tribunal of the United States may have jurisdiction of crimes committed before its organization by Congress.—(*Ibid.*)

16. Laws which recognize or otherwise modify the judicial tribunals of the United States are not *ex post facto* laws within the scope of the prohibitory clause of the Constitution.—(*Ibid.*)

17. An officer or soldier of the army, who does an act criminal both by the military and the general law, is subject to be tried by the latter in preference to the former under certain conditions and limitations.—(6 : 413.)

18. But his conviction or acquittal, by the civil authorities, of the offence against the general law, does not discharge him from responsibility for the military offence involved in the same facts.—(*Ibid.*)

19. Public officers are indictable at common law for acts of malfeasance in office committed in the District of Columbia.—(6 : 599.)

20. The *Code Pénal* of France punishes all “*forfaitures*”—that is, official crimes of any sort committed by civil functionaries, and this by indictment before the courts of justice.—(7 : 9.)

21. But the statute law of the United States, with excess of enactment in particular cases, is incomplete and without comprehensiveness of penal scope regarding acts of official malfeasance.—(*Ibid.*)

22. Acts of Congress provide for the embezzlement of public money, and for that of arms, ordnanee, munition, shot, powder, habiliments, or provisions of war ; but not of any other chattels belonging to the government.—(*Ibid.*)

In the army and navy, however, all acts of malfeasance, including embezzlement, are punishable as military offences.—(*Ibid.*)

23. An officer of the navy in command, who requires the purser to pay him more money than is due him, and fails to account, is not guilty of embezzlement under any existing act of Congress.—(7: 82.)

C U S T O D Y .

1. In legal contemplation, the goods (diamonds of the Princess of Orange) are in the custody of the court as soon as the process is issued, and the collector, not the marshal, is the official custodian until the question of forfeiture is adjudicated.—(2: 477.)

C U S T O M .

(SEE REVENUE LAWS, USAGE.)

D A M A G E S .

1. The President has no power to afford pecuniary redress to a party who alleges abuse of power against him by the attorney of the United States for one of the Territories.—(6: 392.)

(See *Contract, Claims.*)

2. In the case of a contract with the government rescinded for lawful cause, but without fault on the part of the contractor, the latter has no right to vindictive damages, or to any collateral or consequential damages; nor is he entitled to damages in the rate of the contract as if completely performed by him; but the true measure of damages, whether in equity or law, is the actual value of the contract *per se*, and the actual loss of its non-performance.—(6: 516.)

3. The Comptrollers and Auditors of the Treasury have no general authority to award damages as for tort, on contract broken; their jurisdiction is confined to matters of account arising *ex contractu* or by operation of law.—(*Ibid.*)

4. The extraordinary expenses of a party incurred in living at St. Mary's, whither he retired after the destruction of his property in Florida, are a matter too remotely consequential to be the proper subject of damages under the 9th article of the treaty of 1819 between the United States and Spain.—(6: 530.)

5. Damages on the rescission of a mail contract by the Postmaster cannot be allowed beyond the actual loss to the party.—(7: 286.)

6. In the case of a Post Office contract, cancelled by the Postmaster General, it is in the option of the other party to take the one month's extra allowance provided by the contract, or to claim damages at large; but if he elect to accept the former, that is in legal waiver of the latter.—(7: 487.)

7. The acceptance by a mail contractor, on the rescission of his contract by the Postmaster General, of the month's extra compensation stipulated for such case in the contract, is a waiver of all claim for other damages.—(7: 644.)

(See *Accounts.*)

DEATH WARRANT.

1. The President will issue death warrants in order to give effect to the laws in cases where they are necessary by the practice of the State in which the sentence is passed.—(1: 228.)

2. The President has determined to leave the execution of the law in all cases to the direction of the court, in full confidence that they will give a reasonable time for the exercise of executive clemency in cases where it ought to be interposed.—(2: 344.)

DEBTORS.

1. Under the act of 1832 it is not necessary that parties shall be insolvent debtors, within the meaning of the priority acts, in order to be entitled to relief. It is sufficient that they are unable to pay their debts to the United States.—(2: 552.)

2. Neither the act of 1831 nor of 1832 deprives debtors of their right to relief where they fail to place the United States upon equal footing with the rest of their creditors. All persons who are unable to pay their debts to the United States may be released, provided they are not of that class who are excepted from the benefit of those laws. (*Ibid.*)

3. The Secretary of the Treasury may, in his discretion, refuse a discharge on account of circumstances taken in connexion with the application of the property of debtors to their private creditors. He may have evidence that renders them unfit subjects for relief. But the application of all the debtor's effects to the payment of private creditors is not of itself a legal bar to their release.—(*Ibid.*)

4. Where imprisoned debtors are discharged on payment of costs, it is to be inferred that the condition embraced only the costs of suit in the cases in which they were imprisoned.—(3: 614.)

5. The expenses of the examination may be paid from the judiciary fund.—(*Ibid.*)

6. The act of 6th June, 1798, requires an assignment of all debtors' estate as a preliminary to his discharge.—(5: 727.)

7. The discharge of a principal debtor under the act of 3d March, 1817, does not discharge the sureties of such debtor.—(5: 746.)

8. Where acts are done by a debtor to prevent the legal priority of the United States from vesting, and to enable him, in contemplation of legal insolvency, to dispose of his property so as to secure other and more favored conditions; the United States are thereby deprived of their priority, the law withholds from such creditors the release which it is a matter of indulgence and favor to grant. See Opinions, July 28, 1831, vol. 2, p. 451.—(7: 562.)

DEMURRAGE.

1. Demurrage may be either *ex contractu* or *ex delicto*; in either case it is a recompense fixed upon the deliberate consideration of all the circumstances attending the usual earnings and expenditures of a ship in common voyages; and has reference to her expenses, such as wages and provisions, wear and tear, and common employment.—(6: 285.)

2. In the case of delay of a ship employed in the transportation of troops for the United States, under circumstances which would be demurrage in ordinary contracts of affreightment, the Secretary of War may allow compensation in the nature of demurrage or by implied contract of the department.—(*Ibid.*)

DEPARTMENT.

1. Any head of a department may, in his discretion, employ special counsel in behalf of the government.—(7: 141.)

2. As a general rule the direction of the President is to be presumed in all instructions and orders issuing from the competent department.—(7: 452.)

3. Official instructions, issued by the heads of the several executive departments, civil and military, within their respective jurisdictions, are valid and lawful, without containing express reference to the direction of the President.—(*Ibid.*)

4. Heads of departments or of bureaus, and other certifying officers of the government, cannot certify by delegation, unless when specially authorized so to do by act of Congress.—(7: 594.)

DEPOSIT.

1. An agent of the government cannot require it to receive the credit of a bank, or any other third party, in the place of that of himself and his sureties.—(6: 314.)

2. A bank cannot lawfully take public funds which had been deposited with it, knowing them to be such, and divert them from a public debt to the payment of the private debt of the public agent, or to a debt contracted by him in violation of law and of his duty to the government.—(*Ibid.*)

3. A debtor, in paying money to a bank, has the right to prescribe to which of two existing debts it shall be credited.—(*Ibid.*)

4. Where a disbursing agent of the United States had paid public money into a bank, the government will not undertake to settle incidental matters of controversy between him and the bank, but leaves all such questions to the courts of justice.—(*Ibid.*)

(See *Funds.*)

DESCENT.

1. Under the laws of Maryland, a mother is not the heir of a child unless there were no representatives of the child in the paternal line.—(2 : 579.)

2. In the event of the death of reservees under the Choctaw treaty, before the expiration of five years' residence upon the land, required as a condition precedent to a grant and fee-simple, the interest is not defeated, but goes to those persons who, by the State laws, succeed to the inheritable interest of individual Indians.—(3 : 107.)

3. Surviving sisters of the half-blood of deceased soldiers, who, at their demise, were entitled to bounty lands from the government, are equally entitled with the brothers and sisters of the whole blood to receive such bounty, or the money in its stead.—(5 : 26.)

4. Where money is due from the government to the heirs of one deceased, and there is dispute as to the legal descent, the latter question should be decided by the court rather than by the executive officers.—(5 : 670.)

5. By the laws of the State of Virginia, the legal representatives, the heirs or devisees of any one of her officers or privates, who fell or died in service during the revolutionary war, are entitled to the same quantity of bounty land as would have been due to him had he continued to live and to serve to the end of the war, and warrants therefor lawfully issued are to be satisfied by scrip of the United States.—(6 : 258.)

6. The words "legal representatives" in a statute generally intend executors and administrators, but may, according to the context and subject-matter, intend heirs at law.—(7 : 60.)

7. During a professional visit of Madame Sontag Rossi to the United States, she invested the sum of twenty-five thousand dollars in stocks of the United States in her own personal name, and after her decease administration upon this property, as legal assets in the State of New York, was granted by the surrogate of the county of New York to "George Christ, of the city of New York, the attorney in fact of Charles Count Rossi, husband of Henrietta Rossi, deceased, late of Vienna, Austria;" the power of attorney referred to, having been executed by Count Rossi after the death of Madame Sontag Rossi

and giving to Mr. Christ authority "to collect and receive any and all money due to me in any way, and to sell any stocks standing in my name on the books of any company in the United States, and the dividends on the same to receive:"

Held, That this power of attorney does not, by the laws of the State of New York, apply to the stocks in question, which stocks having been invested in the name of his wife, and not having been reduced to possession by her husband during her lifetime, are not of necessity money or effects due or growing due to Count Rossi.—(7: 68.)

8. In general, by the statutes of New York, administration on the estate of the deceased wife is granted to the husband *juri mariti*; but that rule does not apply here, because the distribution of the effects of decedents is governed by the personal, not the local statute, and depends, in this case, on the *lex domicilii*, that is of Austria.—(*Ibid.*)

9. In the present case, the rights of property, appertaining to Count Rossi in the premises, if any, must be determined in Austria.—(*Ibid.*)

10. Count Rossi being a non-resident alien, is not, by the statutes of New York, entitled to administration there, and not being entitled himself, he cannot communicate any representative right of administration to Mr. Christ.—(*Ibid.*)

11. It is doubtful whether the mere fact of a given dividend, on any stocks of the United States, being transmitted to the assistant treasurer of New York for payment, makes those stocks local assets in the State of New York.—(*Ibid.*)

12. By the treasury regulations, transfer of public stocks held by foreign decedents may be made, on satisfactory proof that the party claiming the right in such stocks is entitled as devisee, distributee, or otherwise according to law.—(7: 240.)

13. The rule for the distribution of the personal effects of any deceased citizen of the United States, either at home or abroad, is the law of the particular State of his domicil, and cannot be changed by act of Congress.—(7: 242.)

14. The face of a banker's circular letter of credit, found in the possession of an American dying abroad, is not assets to that amount to be administered by the consul.—(7: 542.)

15. Unlocated land scrip of the State of Virginia belonging to the estate of the Baron Steuben, being personal estate, is subject to the testamentary provisions of Baron Steuben's will, proved in the State of New York, and therefore demandable, on the failure of testamentary trustees, by a trustee duly appointed by the courts of New York.(7: 688.)

DIPLOMACY.

(SEE MINISTER—LAW OF NATIONS.)

DISTRICT ATTORNEYS.

I. GENERALLY.

II. COMPENSATION OF.

I. GENERALLY.

1. Where the decree of a judge raises a presumption against the jurisdiction of the United States courts, in cases of capture, the district attorney may cause the necessary depositions to be taken *de bene esse*, to be used by the Executive, in case the appellant does not prosecute his appeal, or the decree be affirmed.—(1 : 39.)

2. A district attorney may assure a counterfeiter of a pardon, who shall disclose his accomplices, and produce the plates and counterfeited paper ; but the mere disclosure is not enough.—(1 : 77.)

3. If citizens of the United States are accessory to an offence by a foreigner against our revenue laws, the district attorney for the district where the offence was committed should be instructed to inquire into the facts, to see if any laws of the United States have been violated.—(1 : 560.)

4. The act of May 26, 1824, concerning land claims in Missouri and Arkansas, required the district attorney to make out a statement containing the facts of the case, and the points of law on which the same was decided. A copy of the record is not enough.—(2 : 64.)

5. It is not the official duty of a district attorney of the United States to attend on the examination by a magistrate of a State, of a complaint preferred by an officer of the army against a citizen for

violation of an act of Congress ; or to leave the place of his residence to assist such officer of the army in procuring evidence, or otherwise preparing the case.—(6 : 218.)

II.—COMPENSATION OF.

1. The district attorney of New Jersey is entitled to special compensation for attending a State court in behalf of the United States, and for attending the taking of depositions, and for disbursements in the suit ; but if the cause be removed to the circuit court of the United States, and be there attended to by him, his compensation is that which district attorneys are entitled to under the act of February 28, 1799, being the highest fees which are allowed by the laws of New Jersey for similar services in the supreme court of that State.—(1 : 385.)

2. It is the duty of district attorneys to attend all the courts of their respective districts when required by the government ; but as no fees are prescribed for attending State courts, they should receive a reasonable compensation for such service.—(2 : 319.)

3. District attorneys not being required by the laws defining their general duties to attend State courts, nor upon judges out of court, if their services are called for therein, or on other special occasions, and the fees taxed by them in such State courts cannot be recovered, or are inadequate, they should be paid a fair compensation out of any moneys appropriated to the special objects in reference to which the services were rendered, or, in some cases, out of the judiciary fund usually provided in the general appropriation bill.—(3 : 45.)

4. The reference to the fees of the State courts, contained in the acts of 1789 and of 1799, does not apply to the courts nor to the district attorneys of States where there are no fees by law, but refers to those where the laws give taxable fees.—(3 : 252.)

5. The United States should, in such cases, make a reasonable allowance to their attorneys in the States where the latter can look only to their employers for compensation.—(*Ibid.*)

6. Where, under special instructions, district attorneys render services of various sorts, necessary to discover criminals and in procuring adequate evidence, they may be allowed an adequate compensation by the proper department.—(3 : 515.)

7. The district attorney for the District of Columbia is entitled to a reasonable compensation, over and above his salary and stated fees, for attending, on the part of the United States, during the taking of

certain depositions in said district in a case pending before the circuit court of Missouri.—(3: 599.)

8. The district attorney of Vermont is entitled to an allowance for expenses incurred in numerous journeys, undertaken, with the approbation of the Solicitor of the Treasury, for the purpose of securing certain payments due to the United States, and a further allowance for compensation in superintending the sale of certain real estate in Vermont.—(3: 612.)

9. The representatives of the late district attorney for the District of Columbia are not entitled to extra compensation for services rendered the United States by him in a proceeding by mandamus against the Postmaster General for refusing to allow credits settled and adjusted by the Solicitor of the Treasury, under the act of Congress of July 2, 1836; it being his duty to attend to the proceeding in behalf of the United States.—(4: 191.)

10. Nor are they entitled as a matter of right to any compensation not stipulated to be paid him for assisting the Attorney General in arguing the cause before the Supreme Court of the United States.—(*Ibid.*)

11. The district attorney for the southern district of New York may be allowed his fees and costs for defending the collector at the port of New York, in cases in the State courts for repayment of duties, in addition to the maximum allowance mentioned in the act of Congress of 1842, as the judicial department has thus decided in two several cases, in which the United States have acquiesced.—(4: 294.)

12. Where a district attorney acted as counsel for a collector of customs in suits instituted against him to recover back duties paid under protest, and was adjudged by the circuit court to be entitled to receive his fees and disbursements for such service from the United States: *Held*, that the same should not be included in his official return of fees under the act of 18th May, 1842, for the reason that the services were rendered as the private counsel of the collector, and not in his official capacity as district attorney.—(4: 308.)

13. And though the claim be meritorious, a district attorney is not entitled to extra compensation for services rendered in prosecuting for violations of the law respecting post offices.—(4: 347.)

14. District attorneys in Louisiana, and other States whose legislatures have omitted to provide any rate or scale of fees for legal services in their supreme courts, are, nevertheless, entitled to a reasonable compensation for their official services; and as it has been the practice of the Treasury, in such cases, to allow bills of costs according to the rates certified and taxed by the judges for district attorneys

in neighboring States as reasonable, when certified by one or more prominent members of the bar, such usage may be continued until Congress shall otherwise determine.—(4: 448.)

15. A district attorney is not required by law to attend a State court; and where he is requested to do so by the Secretary of War, or other head of an executive department, he is entitled to be allowed a reasonable compensation for his services.—(4: 514.)

16. Where the district attorney of Pennsylvania had, by the direction of the Postmaster General, instituted several suits against toll-gate keepers and others, to enforce the penalties prescribed by the 9th section of the act of 3d March, 1825, for sundry interruptions of the transit of the United States mails, by exacting tolls upon passengers conveyed in the mail coaches, and a *nolle prosequi* was subsequently entered by direction of a succeeding Postmaster General in every case: *Held*, that the said district attorney is fairly entitled to compensation from the United States for services rendered.—(5: 172.)

17. By the acts of 1789, 1824, and 1844, it was the official duty of the district attorney to appear and defend the United States in the suits in question; and whatever fees or compensation he is entitled to for the services must be taken and considered as part of the fees and emoluments of his office, as provided in the act of 18th May, 1842.—(5: 261.)

18. There is no law authorizing the payment of \$149 to the district attorney of Florida for defending land suits; such payment being prohibited by the general appropriation act of 1842, sec. 173.—(5: 567.)

19. District attorneys are entitled to fair compensation for extra official services performed at the request of a head of a department.—(5: 577.)

20. The provisions of the act of 1853 regulating the fees of district attorneys of the United States, and prohibiting the receipt of any fees, except such as are therein specified, do not necessarily apply to services of a district attorney in the courts of one of the States.—(6: 299.)

21. Special fees for counsel in the business of any one of the departments are chargeable to the proper fund of such department, and not to the judicial fund.—(*Ibid.*)

22. For the performance of a duty, not enumerated in the act regulating the fees of district attorneys, they are entitled to compensation, either in the analogy of the fees fixed by that act, or at the discretion of the head of department ordering the service.—(7: 46.)

23. A district attorney may lawfully receive special compensation for extra official services in the pursuit and collection of public funds embezzled by a deputy postmaster.—(7: 53.)

24. A district attorney of the United States, in charge of a suit in the courts of the United States in his district, does not become entitled to extra compensation for service in the argument of said suit by reason of his receiving instructions relating thereto from the Secretary of the Navy.—(7: 84.)

DOMICILE.

1. The question of the domicil, nationality, or competent forum of a slave, depends on that of his master.—(7: 278.)

2. Hence, if a crime be committed by a slave in the Indian country, and his master is a citizen of the United States, he must be tried by the district court.—(*Ibid.*)

3. But if the slave of a Cherokee commit a crime against a Cherokee, and in the Cherokee nation, he is triable by the Cherokees.—(*Ibid.*)

DOWER.

1. Marriage, seisin, and the death of the husband are essential to the right of dower. Where the seisin is not sufficiently proved, dower cannot be allowed.—(2: 47.)

ELECTION.

1. A legal quorum of the trustees of Columbia College being present for the transaction of business, and it being announced in order to proceed to the election to fill a vacancy in the board, and the majority of the quorum voting for an individual who was thereupon declared elected, the election is valid.—(2: 46.)

EMBEZZLEMENT.

1. A clerk in a post office acting as a cashier is a public officer within the meaning of the penal clause of the sub-treasury act of 6th August, 1846, and liable to prosecution under it for embezzling funds intrusted to him.—(5: 685.)

2. An officer of the navy in command, who requires the purser to pay him more money than is due to him, and fails to account, is not guilty of embezzlement under any existing act of Congress.—(7: 82.)

EMINENT DOMAIN.

1. The United States may lawfully make title to land in one of the States by expropriation as of the eminent domain of such State, and with assent thereof.—(7: 114.)

2. The act of the legislature of Maryland, empowering the United States to acquire land in said State, for the use of the Washington aqueduct, is not in conflict with the Constitution either of that State or of the United States.—(*Ibid.*)

3. The acquisition of land by the United States through the means of a statute process of expropriation, is a “purchase,” which, if done in strict accordance with the form of the statute, may be certified by the Attorney General as vesting a valid title in the United States.—(*Ibid.*)

4. The United States cannot take private land for the construction of a road in one of the Territories without some legal form of expropriation, either by act of Congress or of the Territory.—(7: 320.)

5. The United States never held any municipal sovereignty, jurisdiction, or right of soil in the territory of which any of the new States are formed except for temporary purposes, namely, to execute the trusts created by deeds of cession of Virginia, Massachusetts, Georgia, and other States in the original common territory of the Union, or by the treaties with France, Spain, and the Mexican republic in the Territories of Louisiana, the Floridas, New Mexico, and California.—(7: 571.)

6. The provisions of the ordinance for the organization of the northwest territory were extinguished by the Constitution, or if any of them retain continuing validity, it is only so far as they may have authority derived from some other source, either the compacts of cession or acts of Congress under the Constitution.—(*Ibid.*)

7. This doctrine has been applied in leading cases to questions touching the property in public lands, the relation of master and slave, religion, and navigable waters, and the eminent domain, and may be taken as the established legal truth.—(*Ibid.*)

8. In obedience to the same principle, and proceeding in the same line of adjudication, it must have been held, if the question had come

up for judicial determination, that the provision of the act of March 6, 1820, which undertakes to determine in advance a perpetual rule of municipal law for all that portion of the province of Louisiana which lies north of the parallel of thirty-six degrees and thirty minutes north latitude, was null and void *ab incepto*, because incompatible with the organic fact of equality of internal right in all respects between the old and the new States.—(*Ibid.*)

9. The same doctrine controls the question of the relative rights of the United States, and of any one of new States, in regard to lands occupied by the United States for public purposes in such State.—(*Ibid.*)

10. Mines of the precious metals belong to the eminent domain of the political sovereignty, as well by the laws of Spain as by the common law of England and the public law of the United States.¹—(7: 636.)

¹ A bridge, erected and owned by a private corporation, and held for the purpose of exercising the franchise granted by its charter, to take toll for passing the same, may be taken and laid out as a part of a public highway, under a general law of the State, authorizing the act, compensation being adjusted and made to the corporation in the same manner as to natural persons for taking their property; and such a law, so applied, does not impair the obligation of any contract.—(*West River Bridge Company vs. Dix*, 6 How 507.)

ENLISTMENTS.

1. It is the settled policy of the government to encourage re-enlistments; and where, under the act of 3d of March, 1847, soldiers have received certificates of merit which entitle them to additional pay of two dollars per month, such pay does not cease at the expiration of the term during which they received the certificates, but continues through successive enlistments.—(5: 400.)

(See *War Department*.)

2. Soldiers who re-enlist in the army within two months before, or one month after, the expiration of the term, are entitled to the bounty provided by the act of July 5, 1838, and also to that provided by the act of June 27, 1850, where the re-enlistment takes place in the vicinity of the military posts on the western frontier and at remote stations.—(6: 187.)

3. Enlistments into the army, made under the inducements held out by the laws of the United States, are contracts; and, although the government be a party, still the contracts "ought be construed according to those well-established principles which regulate contracts generally."—*Huidekoper's Lessee vs. Douglass*, 3 Cranch, p. 70.—(*Ibid.*)

4. Officers of the army employed in recruiting may lawfully enlist persons not naturalized as citizens of the United States.—(6: 474.)

5. The Secretary of War is not under obligation by law to discharge minors from the army on the application of alleged parents or guardians not domiciled in the United States.—(6: 607.)

6. It is a settled principle of the law of nations that no belligerent can rightfully make use of the territory of a neutral State for belligerent purposes without the consent of the neutral government.—(7: 367.)

7. The undertaking of a belligerent to enlist troops of land or sea in a neutral State without the previous consent of the latter, is a hostile attack on its national sovereignty.—(*Ibid.*)

8. A neutral State may, if it pleases, permit or grant to belligerents the liberty to raise troops of land or sea within its territory; but for the neutral State to allow or concede this liberty to one bel-

ligerent, and not to all, would be an act of manifest belligerent partiality and a palpable breach of neutrality.—(*Ibid.*)

9. The United States constantly refuse this liberty to all belligerents alike, with impartial justice; and that prohibition is made known to the world by a permanent act of Congress.—(*Ibid.*)

10. Great Britain, in attempting, by the agency of her military and civil authorities in the British North American provinces, and her diplomatic and consular functionaries in the United States, to raise troops here, committed an act of usurpation against the sovereign rights of the United States.—(*Ibid.*)

11. All persons engaged in such undertaking to raise troops in the United States for the military service of Great Britain, whether citizens or foreigners, individuals or officers, unless protected by diplomatic privilege, are indictable as malefactors by statute.—(*Ibid.*)

12. Foreign consuls are not exempted, either by treaty or the law of nations, from the penal effect of the statute.—(*Ibid.*)

13. In case of indictment of any such consul or other official person, his conviction of the misdemeanor, or his escape by reason of arranged instructions or contrivances to evade the operation of the statute, is primarily a matter of domestic administration, altogether subordinate to the consideration of the national insult or injury to this government involved in the fact of a foreign government instructing its officers to abuse, for unlawful purposes, the privileges which they happen to enjoy in the United States.—(*Ibid.*)

14. The acts of Congress, prohibiting foreign enlistments, is a matter of domestic or municipal right, as to which foreign governments have no right to inquire, the international offence being independent of the question of the existence of a prohibitory act of Congress.—(*Ibid.*)

15. A foreign minister who engages in the enlistment of troops here for his government, is subject to be summarily expelled from the country, or, after demand of recall, dismissed by the President.—(*Ibid.*)

ERROR.

1. Where error is apparent on the record of a judgment for unjustifiable seizure in a State court, a writ of error may be applied for in behalf of the aggrieved party.—(1: 30.)

EVIDENCE.

- I. GENERALLY.
 - II. ADMISSIBILITY OF EVIDENCE.
 - III. EVIDENCE BEFORE THE EXECUTIVE DEPARTMENTS.
-

I.—GENERALLY.

1. Captures must be determined upon by evidence which is admissible in courts of admiralty.—(1 : 40.)

2. Public officers should furnish authenticated copies of documents in their custody to be used as evidence before commissioners under the 6th article of the British treaty.—(1 : 82.)

3. It is sufficient if the Secretary of the Treasury impress his name to papers with a stamp or copper-plate instead of a pen, provided he keep the stamp in his own possession and apply it himself, or cause it to be applied in his presence, and is capable of seeing what he does, so that one paper cannot be passed upon him for another.—(1 : 670.)

4. Where payment was to be made, under act of May 24, 1824, for the relief of certain assignees, held that the notes of the assignor exhibited by the assignees were *prima facie* evidence of the debt, though the administrator might controvert it.—(1 : 692.)

5. The rule of law that no evidence shall be given against a prisoner except in his presence is a personal privilege, which he may waive.—(1 : 706.)

6. A receipt acknowledging that money had been received in part payment for a Virginia military land warrant, but importing on its face that more was due, is not sufficient evidence of assignment ; it is only evidence of an incomplete contract.—(2 : 56.)

7. Our courts hold that foreign laws are matters of fact, and should be proved like other facts.—(2 : 168.)

8. A receipt, dated 1785, acknowledging the receipt of money in part payment of a Virginia military warrant, is not *per se* an assignment, nor is it evidence of an assignment.—(2 : 276.)

9. There is no law which makes entries in the books of paymasters

of the marine corps, charging officers of that corps with sums of money, admissible as evidence in the settlement of their accounts.—(2: 319.)

10. The board appointed to value the horses having also valued the equipage, and the same having been turned over to the United States with the horses, a portion of which were wanted by the commanding general for immediate service, the inference is warranted that the equipage was turned over with the horses within the meaning of the law.—(3: 503.)

11. There is no doubt of the competency of the evidence of the prosecutor before a court-martial; but how far his credibility may be affected by the relation in which he stands towards the accused, is a question of discretion for the court itself.—(3: 714.)

12. If consent be given that depositions of witnesses abroad may be used on a trial, the point of time at which the consent shall be expressed will not affect the competency of the testimony.—(1: 706.)

13. It is not the right of offenders on trial for violation of the laws of the United States to call upon the officers of the government to exculpate themselves from charges that such officers had given their sanction to the offensive proceedings.—(5: 695.)

14. Evidence of the forging of checks on the communal chest of Breslau, in Prussia, is sufficient cause for the issue of a warrant for judicial inquiry with a view to the extradition of the party, under the treaty between the United States and Prussia.—(6: 761.)

15. Prior to the enactment of the act of March 2, 1855, no law existed for the execution of foreign rogatory commissions to take testimony in the United States.—(7: 56.)

II.—ADMISSIBILITY OF EVIDENCE.

1. *Ex parte* affidavits of persons directly interested are not evidence; but the master of a vessel is a competent witness in the admiralty.—(1: 40.)

2. The commission of a privateer given by the sovereign of *La Plata* should be objected to in evidence, on the ground that such sovereign is not recognized by our government.—(1: 249.)

3. There is no law which makes entries in the books of the paymaster of the marine corps, charging officers of that corps with sums of money, admissible as evidence in the settlement of their accounts.—(2: 319.)

4. Depositions should not be admitted in courts-martial except

under certain restrictions in cases not capital. Such courts should adhere to rules of evidence established in courts of common law jurisdiction.—(2 : 344.)

5. Where, in a contract for the removal of Cherokee Indians, the number to be removed was left indefinite, making a case of latent ambiguity, parol evidence is admissible to show what the contract really was.—(3 : 731.)

6. Courts-martial may receive testimony after a plea of guilty, if the punishment is discretionary, to show the degree of guilt.—(2 : 636.)

III.—EVIDENCE BEFORE THE EXECUTIVE DEPARTMENTS.

1. It is irregular for the War Department to accept certificates of navy surgeons instead of their affidavits, as required by the act of 30th March, 1819, regulating payments to invalid pensioners.—(1 : 533.)

2. A public debtor proposed to discharge himself of an aggregate sum of upwards of \$7,000, by his own oath alone, without any detail of particulars: *Held*, that no principle of common law or equity would justify the accounting officers in allowing charges on such evidence.—(1 : 601.)

3. The rule is this : That an accountant shall be allowed all sums under forty shillings on his oath ; but then he must mention in his affidavit *to whom paid*, and for what and when ; and in chancery, at least, it is said that the whole sum so allowed is not to exceed £100.—(*Ibid.*)

4. Legal evidence from competent sources (excluding the oaths of claimants and all interested parties) is what is intended by the word “proof” contained in the act of the 29th May, 1830.—(3 : 126.)

5. The commissioner may prescribe the mode and kind of proof, how and by whom it should be taken ; but cannot prescribe anything as proof which is not such in fact, nor any rule as to its weight and force.—(*Ibid.*)

6. The Department of War may receive any credible evidence, written or oral, coming from any disinterested source, which may tend to establish the fact that Choctaw heads of families signified to the agent, within due time, their intention to remain and become citizens of the States.—(3 : 134.)

7. The plats returned to the General Land Office by surveyors general are evidence of the existence and general character of rivers, creeks, bays, &c., which the law requires to be marked upon them,

and may be regarded as affording full proof for the purposes of settling pre-emptions and locations.—(3: 420.)

8. If satisfied of the correctness of the account furnished by the commissioners of the school fund in Ohio, the Secretary of the Treasury may allow the three per cent. to accrue to Ohio thereon, no further proof being required by the act of 1820.—(3: 567.)

(See *Courts.*)

EXECUTION.

1. In the early period of the government, there was irregularity in the practice regarding capital sentence under acts of Congress, that is, upon the point whether the convict should be executed on a warrant of the court by which he was tried, or of the President.—(7: 561.)

2. But, in the administration of President Jackson, it was determined, and made known by circular from the office of the Attorney General, in all cases to leave the execution of the sentence of the law to the discretion of the court, in confidence that the courts will give a reasonable time for the interposition of executive clemency in cases where it ought to be interposed.—(*Ibid.*)

3. The President of the United States alone has the power to pardon offences committed in a Territory in violation of acts of Congress.—(*Ibid.*)

EXECUTORS AND ADMINISTRATORS.'

1. Although it has been the custom of the Bank of the United States and the treasury officers to respect powers of attorney derived from foreign executors, the Supreme Court has decided (3 Cranch, 319) that suits cannot be maintained in the District of Columbia upon letters testamentary granted in a foreign country.—(2: 168.)

2. Letters testamentary give to executors no authority to sue for the personal estate of the testator out of the jurisdiction of the power by which the letters were granted, (9 Cranch, 151.)—(*Ibid.*)—See *Wills*.

3. A foreign administrator cannot maintain a suit on letters granted in a foreign country. Whatever may have been the practice of the government concerning foreign letters, it is not safe to act upon a power of attorney to transfer any of the funded debt executed by a foreign administrator.—(2: 171.)

4. Land scrip issued on the surrender of warrants should be issued to the heirs or assignees of the warrantee and not to executors nor administrators, for it is to be considered as belonging to the realty.—(2: 385.)

5. Land warrants for bounty lands are real estate; and where parties first entitled have died, they must in general issue to heirs or devisees, not to administrators, nor to administrators with wills annexed.—(2: 506.)

6. But in a case where there is a will and an administrator to execute it, and the issuing of the warrant to heirs will embarrass the administrator with the will annexed in carrying out the testator's intention; and where there are no conflicting interests to be affected by the form of the issue, it may issue to the administrator in trust for the purposes mentioned in the will.—(*Ibid.*)

7. Where there is a conflict of claims between an executor and his

1 As to suits by and against executors and administrators, see *Matheson vs. Grant*, 2 How., 263; *Ventress vs. Smith*, 10 Pet., 161; *Kane vs. Paul*, 14 Pet., 33; *Stacy vs. Thrasher*, 6 How., 44.

Their accounts.—Page vs. Patton, 5 Pet., 304; *Backhouse vs. Patton*, 5 Pet., 160; *Beatty vs. Maryland*, 7 Cranch, 281.

Liabilities and duties.—Peter vs. Beverly, 10 Pet., 532; *Edmonds vs. Crenshaw*, 14 Pet., 166; *West vs. Smith*, 8 How., 402; *Taylor vs. Benham*, 5 How., 233.

assignees for an award of moneys by the Third Auditor to the decedent, the treasury officers should pay the same to the executor, who is the legal representative.—(3: 29.)

8. Executors and administrators are the “legal representatives,” in contemplation of the act to provide for liquidating and paying certain claims of the State of Virginia.—(3: 43.)

9. An administrator has no right to demand land scrip under the act of May 30, 1830.—(4: 37.)

10. The administration law of Georgia has nothing to do with lands lying without the limits of the State which are governed by the *lex loci*.—(*Ibid.*)

11. Congress was competent to pass, and did pass, an act conferring original authority upon administrators to make sales, without reference to the law of Alabama.—(4: 77.)

12. Where a land warrant issued to the administrator *de bonis non* of a deceased colonel of the Virginia line, for services rendered by him in the revolutionary war, and the said administrator proposed to surrender it and to receive scrip in lieu thereof for the benefit of the devisees named in the decedent's will, pursuant to the act of Congress for the relief of certain officers and soldiers of the Virginia line and navy and of the continental army: *Held*, that as the warrant issued to the administrator with the will annexed, for the benefit of the devisees, scrip in exchange may issue in the same manner and for the same purpose.—(5: 308.)

13. An unliquidated claim to bounty land scrip in Virginia passes by a clause of general residuary devise.—(6: 716.)

14. An administrator of the estate with such will annexed, who, as such, received the bounty land warrant under the authorities of the State of Virginia, is entitled to receive the scrip in exchange from the United States.—(*Ibid.*)

15. The words “legal representatives” in a statute generally intend executors and administrators, but may, according to the context and subject-matter, intend heirs at law.—(7: 60.)

16. During a professional visit of Madame Sontag Rossi to the United States, she invested the sum of twenty-five thousand dollars in stocks of the United States in her own personal name, and after her decease administration upon this property, as legal assets in the State of New York, was granted by the surrogate of the county of New York to “George Christ, of the city of New York, the attorney in fact of Charles Count Rossi, husband of Henrietta Rossi, deceased, late of Vienna, Austria;” the power of attorney referred to having

been executed by Count Rossi after the death of Madame Sontag Rossi, and giving to Mr. Christ authority "to collect and receive any and all money due to me in any way, and to sell any stocks standing in my name on the books of any company in the United States, and the dividends on the same to receive:" *Held*, that this power of attorney does not, by the laws of the State of New York, apply to the stocks in question, which stocks having been invested in the name of the wife, and not having been reduced to possession by her husband during her lifetime, are not of necessity money or effects due or growing due to Count Rossi.—(7: 68.)

17. In general, by the statutes of New York, administration on the estate of the deceased wife is grantable to the husband *jure mariti*, but that rule does not apply here, because the distribution of the effects of decedents is governed by the personal, not the local statute, and depends in this case on the *lex domicilii*, that is, of Austria.—(*Ibid.*)

18. In the present case the rights of property appertaining to Count Rossi in the premises, if any, must be determined in Austria.—(*Ibid.*)

19. Count Rossi, being a non-resident alien, is not, by the statutes of New York, entitled to administration there, and not being entitled himself, he cannot communicate any representative right of administration to Mr. Christ.—(*Ibid.*)

20. It is doubtful whether the mere fact of a given dividend on any stocks of the United States, being transmitted to the assistant treasurer of New York for payment, makes those stocks local assets in the State of New York.—(*Ibid.*)

21. The face of a banker's circular letter of credit, found in the possession of an American dying abroad, is not assets to that amount to be administered by the consul.—(7: 542.)

EXPLORING EXPEDITION.

1. The arrangements for an exploring expedition being at the discretion of the President, he may appoint and employ a medical assistant thereto without the formality of an examination and approval by the board of surgeons.—(3: 289.)

EXTERRITORIALITY.

(SEE LAW OF NATIONS.)

EXTRADITION.

I. FUGITIVES FROM JUSTICE.

II. FUGITIVES FROM SERVICE.

I.—FUGITIVES FROM JUSTICE.

1. If a Spanish subject who has violated the territorial law of Florida shall be within the United States at the time of demand for him as a subject and fugitive from justice, he ought to be given up for trial and punishment; yet there is no law directing the mode of proceeding.—(1: 68.)

2. The extradition of persons under 27th article of British treaty of 1794 is not authorized, unless the crime they are accused of was committed within the jurisdiction of Great Britain.—(1: 83.)

3. Although there is no act of Congress authorizing a call by a governor for the surrender of a midshipman charged with a breach of the peace of a State, nor any law authorizing an arrest by the executive with a view to a forcible surrender of him for the purposes of trial, it is important that the accused should *surrender himself*, and that an order from the Navy Department be given.—(1: 244.)

4. Whether a British subject who has runaway with a British vessel, and entered one of our ports in violation of our revenue laws, should be delivered to the officers of his government for trial, is doubtful as a question of international law; such a case not having been provided for by any statute or existing treaty.—(1: 510.)

5. Where a French vessel, with Africans on board, unlawfully taken from their native land, was captured by pirates and from them captured by an American vessel and brought into port, and a demand for the Africans was made by the French minister with a view to their restoration: *Held*, that the application was well founded and should be acceded to.—(1: 534.)

6. Neither the President nor the commander of a regiment will surrender an officer to the civil authorities on a charge of violating the law, unless the charge is specifically set forth and properly substantiated.—(2: 10.)

7. The executive is not authorized to deliver up to the King of Portugal the seamen confined in Boston, who are charged by the chargé

d'affaires of his majesty with piracy committed on the brig Triumph.—(2: 559.)

8. There is no law of Congress which authorizes the President to deliver up any one found in the United States, who is charged with having committed a crime against a foreign nation; and we have no treaty stipulations with Portugal for the delivery of offenders.—(2: 559.)

9. No State can, without the consent of Congress, enter into any agreement or compact, express or implied, to deliver up fugitives from justice from a foreign State who may be found within its limits.—(3: 661.)

10. According to the practice of the executive department, the President is not considered as authorized in the absence of any express provision by treaty to order the delivering up of fugitives from justice.—(*Ibid.*)

11. Where a person is charged with the commission of the crime of murder in Scotland, and apprehended in the United States, and examined before a commissioner, and by him certified to be probably guilty on the evidence adduced: *Held*, that he should be delivered up to justice if the evidence upon which the application is founded be such as, according to the laws of the place where the fugitive shall be found, would justify his or her apprehension and commitment for trial if the crime had there been committed.—(4: 201.)

12. In such cases the mode of procedure is to prefer a complaint to a judge or magistrate, setting out the offence charged on oath; whereupon the judge or magistrate may issue a warrant for the apprehension of the person accused, and if, on the hearing, the evidence be deemed sufficient to sustain the charge, the same should be certified to the executive authority, that a warrant may issue for the surrender.—(*Ibid.*)

13. A commissioner for the United States appointed by the circuit court, is a magistrate within the meaning of the law and the treaty of Washington; and as such, has power to apprehend, examine and certify, as to fugitives from justice.—(*Ibid.*)

14. A requisition for a fugitive is not necessary to a preliminary examination upon which the evidence of criminality is to be heard and considered, but with a view only to the surrender, after the ascertainment of the facts showing the party charged to be in a condition which justifies the apprehension and commitment for trial, according to the laws of the place where he or she shall be found.—(*Ibid.*)

15. The Executive will not issue his warrant for the surrender of

fugitives under the 10th article of the treaty of Washington, except in cases where the preliminary proceedings have been had and properly certified to him.—(4: 240.)

16. The mode provided for the surrender of persons accused of the crimes mentioned in the treaty with France is by requisitions made in the name of the respective parties, through the medium of their respective diplomatic agents.—(4: 330.)

17. The surrender will be made only when the fact of the commission of the crime shall be so established that, according to the laws of the country in which the fugitive, or the person so accused, shall be found, his or her apprehension and commitment for trial would be justified, if the crime had been there committed.—(*Ibid.*)

18. The international extradition of fugitives from justice is a duty of comity, not of strict right.—(6: 85.)

19. It is the settled policy of the United States not to make such extradition except in virtue of express stipulations to that effect.—(*Ibid.*)

20. Hence, the United States ought not to ask for extradition in any case as an act of mere comity.—(*Ibid.*)

21. Larceny is not included in the causes of extradition stipulated as between Great Britain and the United States.—(*Ibid.*)

22. Any foreign government entitled by treaty to the extradition of a fugitive from justice may apply to the courts, in the first instance; but, if requested, the President will issue the previous authorization held to be necessary by a portion of the court in Kaine's case.—(6: 691.)

23. On a party being arrested for extradition and brought before a magistrate, that magistrate examines the case judicially; and his decision is not subject to any direction on the part of the President.—(*Ibid.*)

24. Hence, the question of remanding the prisoner for further examination, and the time of remanding, are questions for the magistrate to determine.—(*Ibid.*)

25. The alleged fugitive may be arrested a second time on a new complaint, either with or without a new warrant of the President.—(*Ibid.*)

26. In granting his mandate, at the request of a foreign government, for the purpose of commencing proceedings in extradition, the President does not need such evidence of the criminality of the party accused as would justify an order of extradition; but only *prima facie* evidence.—(6: 217.)

27. When a commissioner of the United States has made return

according to law, as to an alleged fugitive from justice, that he is lawfully subject to extradition, it is the duty of the Secretary of State to order the final writ of extradition, notwithstanding any contradictory proceedings of the courts of a State.—(6: 270.)

28. Where a marshal of the United States has in custody a fugitive from foreign justice, under warrant of extradition from the proper authorities of the United States, and a State court undertakes to usurp jurisdiction of the case, it is the duty of the marshal, disregarding any process of the State court, to take the party to the exterior line of such State, and there deliver him to the agent of the foreign government.—(6: 290.)

29. Constructive larceny, consisting of embezzlement of the money of a bank by one of its officers, is not among the causes of extradition provided for by treaty between Great Britain and the United States.—(6: 431.)

30. The United States will not make demand for extradition of a person alleged to be a fugitive from the justice of one of the United States, and to have taken refuge in Great Britain, except on the exhibition of a judicial "warrant" duly issued, on sufficient proofs, by the local authority of the State in which the crime is alleged.—(6: 485.)

31. Evidence of the forging of checks on the communal chest of Breslau, in Prussia, is sufficient cause for the issue of a warrant for judicial inquiry with a view to the extradition of the party, under the treaty between the United States and Prussia.—(6: 761.)

32. A mere notification by the local officer of a foreign government of the escape of an alleged criminal is not sufficient *prima facie* evidence of a case to justify the preliminary action of the President.—(7: 6.)

33. All demands of international extradition must emanate from the supreme political authority of the demanding State.—(*Ibid.*)

34. A foreign *mandat d'arrêt*, setting forth the offence of a fugitive from the justice of a foreign country within the terms of any treaty of extradition, such mandat coming through the proper political channel, is sufficient foundation for the issue of the President's warrant authorizing the institution of proceedings before the judicial authorities of the United States.—(7: 285.)

35. By treaty between the United States and Great Britain, the expense attending the proceedings in extradition is to be borne by the government making the reclamation.—(7: 396.)

36. But where, in consequence of conflict between the judicial authorities of the United States and those of a State, the latter aiming to prevent the extradition, the United States intervenes to maintain its own dignity in the premises, the special expenses of such intervention should be defrayed by the United States.—(*Ibid.*)

37. The mutual extradition of fugitives from justice is an object alike interesting to all governments.—(7 : 536.)

38. Emigrants and exiles for cause of political difference at home are entitled to asylum in this country ; but not malefactors ; on the contrary, the foreign government which reclaims its fugitive malefactors is serviceable to us by ridding us of the intrusive presence of crime.—(*Ibid.*)

39. Hence, when reclamation of a fugitive from justice is made under treaty stipulation by any foreign government, it is the duty of the United States to aid in relieving the case of any technical difficulties which may be interposed to defeat the ends of public justice, the object to be accomplished being alike interesting to both governments, namely, the punishment of malefactors, who are the common enemies of all society.—(*Ibid.*)

40. The ordinary expenses, including fees of counsel, attending the process of international extradition, are to be defrayed by the demanding government.—(7 : 612.)

41. Extradition cannot be demanded of France by the United States in the case of a breach of trust in the State of California, made grand larceny by the laws of that State.—(7 : 642.)

II.—FUGITIVES FROM SERVICE.

1. It is the duty of the President to cause to be delivered to the minister of Denmark a slave, who, by concealment in an American vessel lying at St. Croix, had been brought to the port of New York and detained in prison until orders might be given concerning the further disposal of him.

(See *Slaves.*)

2. Where a court of one of the States assumes to take, by *habeas corpus*, out of the hands of a marshal of the United States, a person held by him as a fugitive from crime, committed in a foreign country, and under reclamation by treaty, the United States may well, by counsel and direction, protect their marshal in the maintenance of the laws, and in discharge of public faith towards the reclaiming foreign government.—(6 : 227.)

3. A marshal of the United States, when called upon to serve due process for the arrest of an alleged fugitive from service, has no absolute right to demand a bond of indemnity as the consideration of making service.—(6 : 229.)

4. Such bond may lawfully be given by the claimant ; but if he refuses, and the marshal thereupon refuses to proceed, the latter will be responsible in damages or not according as the proofs may appear of the claimant's right of reclamation of service in the case.—(*Ibid.*)

5. In case where a person, claimed as a fugitive from foreign justice, is under examination before a commissioner of the United States, it is not in the lawful power of a State court to revise the case on *habeas corpus* and assume to overrule the commissioner.—(6 : 237.)

6. It is the right of the marshal of the United States to refuse to have the body of the party before the State court, and it is the duty of the courts and other authorities of the United States to protect the marshal in such refusal by all means known to the laws.—(*Ibid.*)

7. The constitutional right of a citizen of the United States to reclaim a fugitive from his lawful service extends, not only to the States and to the organized Territories, but also to all the unorganized territorial possessions of the United States.—(2 : 302.)

8. If, in such Territory, there be no commissioner of the United States to act, the claimant may proceed by recaption without judicial process.—(*Ibid.*)

9. Any such fugitive from service in the Indian country is there unlawfully, and as an intruder is subject to arrest by the executive authority of the United States.—(*Ibid.*)

10. Such fugitive cannot be protected from extradition by any Indian tribe or nation ; for the Indians are themselves the mere subjects of the United States, and have no power in conflict with the Constitution of the United States.—(*Ibid.*)

11. By the local law of the organized political communities of the Cherokees, Choctaws, and Chickasaws, there is ample provision for the delivery up of fugitives from service in any of the States.—(*Ibid.*)

12. When a person is under arrest for any cause on the warrant of a competent judicial authority of the United States, such person cannot lawfully be discharged on *habeas corpus* by the courts of a State, and vice versa.—(6 : 713.)

13. The act of Congress of September 18, 1853, entitled " An act to amend, and supplementary to, the act entitled an act respecting fugitives from justice, and persons escaping from the service of their masters," is a valid and constitutional act.—(*Ibid.*)

14. Certain persons being under arrest in the State of Wisconsin by proper judicial authority of the United States, charged with obstructing the execution of the acts of Congress in the case of a fugitive from service, were discharged from arrest, on *habeas corpus*, by the supreme court of the State, for alleged unconstitutionality of the extradition act: *Held*, that such decision requires to be reviewed on writ of error by the Supreme Court of the United States.—(*Ibid.*)

15. A person, having been indicted and convicted on trial before the district court of the United States for the State of Wisconsin, for the forcible rescue of a fugitive from service in another State, who had been arrested by due process preparatory to extradition; and he having, after conviction, been released by the supreme court of the State on *habeas corpus*: *Held*, that the action of the tribunals of the State was unlawful, and should be brought for review, by writ of error, before the Supreme Court of the United States.¹—(7: 51.)

¹ Where a marshal of the United States, under an order of a commissioner, held the petitioner, for the purpose of making extradition of him as a fugitive from justice under the treaty between the United States and Great Britain, and, upon an *habeas corpus*, a circuit court of the United States held the commissioner's proceedings legal; on application to the Supreme Court for a writ of *habeas corpus*, Justices McLean, Wayne, Catron, and Grier held the decision of the circuit court to be correct. The Chief Justice and Justices Daniel and Nelson held the decision to be erroneous. Mr. Justice Curtis held that this court had not jurisdiction to issue a writ of *habeas corpus* in such a case. *In re Kaine*, 14 How., 103.

FLORIDA.

1. The State of Florida is not entitled to be reimbursed out of the national treasury for the expense of adjusting her accounts for advances, &c., for the militia called into service in 1849.—(5 : 532.)
(See *Claims*.)
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FOREIGNER.

(SEE ALIEN.)

FORFEITURE.

1. The right of the officers and men of the revenue cutter to a moiety of the proceeds of the vessel seized is not impaired by the allegation that the seizure was made within the waters of the district of Georgia.—(5 : 721.)

(See *Revenue Laws, Treasury Department.*)

2. If the vessel has, in all respects, complied with the various requisitions of the revenue laws, applicable to such an importation as that made in the Olive Branch, no forfeiture has been incurred.—(5 : 741.)

3. The act of March 3, 1855, regulating the carriage of passengers in steamships and other vessels, and imposing penalties and punishment for contravention, is made applicable to ships abroad in sixty days in Europe, and six months in other parts of the world ; and requires notice of the act to be given in all foreign ports through the Department of State: *Held*, that where such notice had failed to be given in such foreign port, and the owner or master of a vessel had thus unconsciously offended, it was proper case for remission of forfeiture and for pardon of the master.—(7 : 489.)

FUNDED DEBT.

1. It is the duty of the commissioner of loans to forbear to act in cases where the holder of certificates of the funded debt, or his attorney, presents himself to receive dividends or to transfer the stock after notice, by attachment or private caveat, that an adverse claim has been filed in the office, until the law shall have settled the rights of the parties and given a proper direction to the course of his action.—(2 : 90.)

2. The certificates of the funded debt are made payable to the holder or his assignees. They are therefore on their face assignable. Being properly assigned, the assignee stands in the place of the first holder. Holding a certificate, with an assignment indorsed on the paper itself, is *prima facie* evidence of ownership. But it is only *prima facie* evidence, because a valid assignment may be made on a separate paper which will pass the legal title without the manual tradition of the certificate.—(*Ibid.*)

3. In respect to private caveats, unless the caveators shall state the causes and grounds of them, so that they may be considered and judged of by the commissioner, they should be disregarded ; so, also, where the causes and grounds are manifestly untenable.—(*Ibid.*)

FUNDS, (PUBLIC.)

1. In case an investment in stocks, having twenty years to run, cannot be made, it will be proper to invest in stocks redeemable at a later day.—(3 : 170.)

2. The act designating and limiting the funds receivable for the revenues of the United States forbids the receipt of any bank notes, except of such specie paying banks as shall from time to time conform to certain conditions therein mentioned in regard to small bills, and restrains the Secretary of the Treasury from making any discrimination in this respect between the different branches of the public revenue.—(3 : 172.)

3. No part of the moneys deposited with the States should be called for by the Secretary of the Treasury except to meet such wants of the treasury, under appropriations made by law, as may exist after exhausting the five millions reserved in the treasury by the deposit act; yet a requisition may be made before the treasury shall be actually exhausted.—(3 : 227.)

4. But in such case the time of payment to be named should be about the time when the available means on hand will have been exhausted —(*Ibid.*)

5. Under the order of the Treasury Department, approved by the President on the 5th October, 1833, disbursing officers may legally keep the public moneys intrusted to them on deposit in the banks heretofore selected by the treasury, and which now have the public money.—(3 : 233.)

6. Disbursing officers may legally make special deposits of their funds in non-specie paying banks, if so directed by the President, where they will agree to receive the funds in that way.—(*Ibid.*)

7. Any bank not restrained by its charter, or other statutory enactments, nor by judicial process, from receiving special deposits, is competent to enter into a contract for the safe keeping and return of a special deposit in such way and on such terms as may be agreed on.—(*Ibid.*)

8. An agent of the government cannot require it to receive the credit of a bank, or any other third party, in the place of that of himself and his sureties.—(6 : 314.)

9. A bank cannot lawfully take public funds which had been deposited with it, knowing them to be such, and divert them from a public debt to the payment of the private debt of the public agent, or to a debt contracted by him in violation of law and of his duty to the government.—(*Ibid.*)

10. A debtor, in paying money to a bank, has the right to prescribe to which of two existing debts it shall be credited.—(*Ibid.*)

11. Where a disbursing agent of the United States had paid public money into a bank, the government will not undertake to settle incidental matters of controversy between him and the bank, but leaves all such questions to the courts of justice.—(*Ibid.*)

18. Where a sum of money, standing in the name of A., had been enjoined in a suit in equity by B., and by due order not appealed, the injunction was dissolved as to a part of said sum, and its payment ordered to C. : *Held*, that the Secretary of the Treasury might lawfully pay to C. according to such order.—(6 : 460.)

19. Under the acts of March 3, 1795, May 1, 1820, and August 31, 1852, in general, a balance of appropriation remaining unexpended at the expiration of two years is carried to the "Surplus Fund," and can be withdrawn therefrom only by new appropriation, except in the case of appropriations for objects to which a duration longer than two years is assigned by law ; as to which, and especially expenditures in the War and Navy Departments, the specific appropriations remain in charge of the latter, until, on report therefrom of the object being consummated, the money is credited to the "Surplus Fund" at the Treasury Department.—(7 : 1.)

20. In general, an appropriation or a balance thereof, made in any year for any continuous contract or other service of the government, may be applied to the same service during the succeeding or any subsequent year, and does not lapse into the "Surplus Fund" until the particular object be consummated.—(*Ibid.*)

21. By the treasury regulations, transfer of public stocks held by foreign decedents may be made, on satisfactory proof that the party claiming the right in such stocks is entitled as devisee, distributee, or otherwise according to law.—(7 : 240.)

GARNISHEE.

(SEE PROCESS.)

GENERAL AVERAGE.

1. The cargo of the United States, shipped at Alexandria for Valparaiso, on board a vessel forced by stress of weather to throw overboard a portion of her freight to lighten her and then to put back to Norfolk, incurring expenses of the nature of general average, is bound to contribute to the general average; but whilst such is the opinion of the Attorney General, there are reasonable doubts respecting some of the charges in the case under consideration.—(5: 757.)

GRANT.¹

I.—GENERALLY.

II.—OF INDIAN LANDS.

III.—GRANT OF LANDS FROM UNITED STATES TO THE SEVERAL STATES FOR PUBLIC PURPOSES.

I.—GENERALLY.

1. The king of Spain had ample power to grant lands in Florida while the province was his, and the Roman Catholic church was capable of taking his grants; but whether the lands in question were granted prior to the time stipulated is a question of fact to be determined.—(1: 563.)

2. The principle that a corporation can grant only by its seal is of universal application, and applies as well to the case of a grant to the United States as to an individual.—(1: 572.)

3. The mayor and commissioners of the city of Washington were authorized to convey to the United States “one room for the court, and six rooms for the marshal, clerk, and jurors, and the books, pa-

¹ If a grant of a ferry-right by a State fairly admits of two interpretations, that shall be selected which least restricts the public rights.—(*Mills vs. St. Clair county*, 8 How., 569.)

As to grants of public lands, see *Stoddard vs. Chambers*, 2 How., 284; *Foley vs. Harrison*, 15 How., 433; *Lessieur vs. Price*, 12 How., 59; *Forsyth vs. Reynolds*, 15 How., 358; *Wallace vs. Parker*, 6 Pet., 680; *Delassus vs. United States*, 9 Pet., 117.

pers, and records of the court;" but, in addition, they conveyed "the use of so much of the basement story of said hall, under the said court room, as shall be necessary for the safe and convenient keeping of fuel," &c. : *Held*, that the latter clause was void.—(1: 615.)

4. As the owner of a land warrant may locate it in as many several parcels as he pleases, he may demand and take a grant for each.—(2: 26.)

5. He may assign any portion of his warrant to a third person, who may, upon the authority of such assignment, make entries in his own name, and take out grants to himself therefor.—(*Ibid.*)

6. Four out of ten children may assign their rights in an unlocated warrant issued to their father, and the assignee may enter the lands in his own name and demand grants therefor in severalty.—(*Ibid.*)

7. A Spanish grant, made upon false suggestions, would have been cancelled by the Spanish sovereign, and an American court of equity should not lend its aid to enforce it.—(2: 191.)

8. A grant made December 2, 1820, was in violation of the 8th article of the treaty of cession.—(*Ibid.*)

9. The settled policy of Spain was to parcel out her colonial domain with reference to the single object of population; and grants for the purpose of speculation were not tolerated.—(*Ibid.*)

10. It is competent only for the sovereign making the grant to release the condition on which it was made. Matters in excuse of non-compliance are not the subject of judicial inquiry.—(*Ibid.*)

11. The release of the Norfolk Drawbridge Company to the United States, in order to extinguish the legal title of the corporation, must be a grant of their title under the corporate seal.—(2: 549.)

12. The third section of the act of February 19, 1831, does not confer the right of purchase and consequent title to the widow and children of A. Follin, deceased, to the exclusion of his assignees claiming under the provision of the 2d section of the act of February, 1831, and February 19, 1833.—(3: 28.)

13. The error as to the date of a certain report of the Commissioner of the Land Office, embracing the Maison Rouge claim, set out in a confirmatory act of April 29, 1816, (being December 4, 1812, when it should read December 14, 1812,) is not fatal to claims mentioned in the said report.—(3: 715.)

14. The construction of a statute is placed by the law in very much the same category as that of wills, and such erroneous recitals are susceptible of correction by parole evidence.—(*Ibid.*)

15. The "league square" is the extent of the satisfaction granted

to claimants under the act of April 29, 1816 ; and whatever may be the extent of the claim, this satisfaction may be had under the act.—(*Ibid.*)

16. In respect to the afore mentioned grant it may be said : The claim to all beyond a league square is unconfirmed, and stands, in every respect, as if the act of Congress had not been passed, except that the fact that Congress has refused to acknowledge it further has the effect to raise a presumption that Congress, by a partial confirmation, did not mean to admit the justice of the claim, but only to buy its peace ; and that the executive department must regard the claim, whatever may be its extent, as satisfied by the acceptance of a league square.—(3 : 737.)

17. Where the attorney of a stockholder in the Maryland and New York Iron and Coal Company had assigned all his interest therein to the government, some time previous to the delivery of a certificate to another, it is not decided but that, notwithstanding the defects in the transaction, equity would protect the transfer made to the government.—(4 : 133.)

18. It having been decided by a former Attorney General (Butler) that the Catholics, as well as the Baptists, have an interest proportionate to their improvements in the net proceeds of the sales of the 160 acres of land upon Grand river, ceded to “ the missionary society,” in the treaty with the Ottowas, ratified May 27, 1836 ; and since it appears, from the papers produced, that the Catholics have a small establishment there, the department is advised to distribute the fund in proportion to the appraised value of their respective improvements.—(4 : 152.)

19. Therefore the Baptist society is not entitled to a patent for the whole land, unless the Catholics will consent to take a pecuniary indemnity in satisfaction of their proportion of the appraised value of the improvements.—(*Ibid.*)

20. But the above opinion is one of acquiescence, from expediency, in the views of Mr. Butler, and not the judgment of the present Attorney General, if the question were *res integra*.—(*Ibid.*)

21. By an act approved March 3, 1819, there were confirmed to J. F. & Co. 310 arpens of land near Mobile ; and the question of the extent of the claim confirmed was acted upon many years ago.—(4 : 156.)

22. The survey, as executed by the surveyor general, which recognizes the claim of J. F. & Co. to hold the strip of land not embraced in the original British grant, ought not to be disturbed.—(*Ibid.*)

23. It is the Spanish grant, enlarging the English grant, that is confirmed, whereby the strip of land between the latter and the river is added.—(*Ibid.*)

24. Concessions of crown lands to individuals in Louisiana, executed in conformity with the laws and usages of the government of Spain whilst that territory was under her dominion, and which were reserved in the treaty of Paris of 1803, must, in general, be held to have been limited to such surveys, descriptions, and demarcations as were sufficient to sever them from the body of the public domain.—(4 : 643.)

25. The title of M. C. to the lands known as the “ Houmas tract,” situate on the left bank of the Mississippi river, above New Orleans, which were once possessed by the Bayou Goula and Houmas Indians, and granted with their assent by Govs. Unzaga and Galvez, in front and back concessions, prior to the cession of Louisiana to the United States, was valid to the extent of the surveys and locations, and no further.—(*Ibid.*)

26. The president and directors of the Navy Yard Bridge Company are competent to execute a deed of said bridge to the United States, pursuant to a resolution instructing them to do so, passed at a regular meeting of the stockholders, upon obtaining the concurrence of the president and directors of the Eastern Branch Bridge Company ; but they cannot convey the individual stock of said company unless the shareholders shall have conveyed it to them.—(5 : 53.)

27. If the several stockholders shall convey their shares to the individuals who are to execute a deed to the United States, and the latter shall execute a deed as well for themselves as the company, a valid transfer of the bridge and the stock will have been effected.—(*Ibid.*)

28. The claimants of certain lands in Florida, under a grant known as “ the Arredondo grant,” having instituted proceedings under the act of 1824 to establish its validity, and having obtained a decree confirming the same, provided it could be located according to its description, which decree was substantially affirmed by the Supreme Court on appeal, with the qualification, that unless certain points and locations could be made, it would be void for uncertainty ; and a mandate to that effect having been sent to the court below, before which all proceedings were suspended, until a report was made by the surveyor general to the General Land Office, that the grant could be located under the said opinion, are not entitled, without completing their legal proceedings, and obtaining a judicial decision upon all the questions necessary to be decided, to take the like quantity of land

in parcels from other lands in Florida, subject to entry and sale.—(5 : 110.)

29. The validity of the grants embraced by the act of 1824, as well as their extent and boundaries, were to be submitted to, and be determined by the courts as judicial questions; and they must be so determined before the executive department can act in the premises.—(*Ibid.*)

30. The patent and deed of conveyance of certain lands situate at the mouth of the Muskegon river, in the State of Michigan, appear to give the United States a valid title to the same.—(5 : 267.)

31. The commissioners appointed under the act of 16th July, 1790, to purchase or accept a site for the seat of government of the United States, had no power to convey any lands in the city of Washington, which had been appropriated as a public reservation for the use of the United States: *Held*, therefore, that the conveyance of such commissioners made on the 25th May, 1798, of a part of the President's square, to the minister of Portugal, in behalf of his government, was void, though approved by the President.—(5 : 464.)

32. The non-user of the land so granted, by any minister of Portugal, for fifty years and more, next after the date of the deed, supports the inference that the want of authority to make the grant was known to, and acquiesced in by the grantee.—(*Ibid.*)

38. The King of Spain had power to grant lands in Florida, whilst the province was his, and the Roman Catholic church had capacity to take title by them.—(5 : 751.)

39. An act of Congress ceded to the city of Memphis "the grounds and appurtenances thereunto belonging, known as the Memphis navy yard: *Held*, that these words carry real estate only, and do not cover the machinery, materials, and other property of the government in the navy y (6 : 653.)

40. To this enactment was appended a proviso, in these words: "*Provided*, That the accounting officers of the treasury" shall settle in a particular way the accounts of a navy agent and acting purser: *Held*, that this proviso does not constitute a condition of the cession, but that the two enactments are distinct in legal effect, they being connected together by the word "*provided*" only by negligence of legislative language.—(*Ibid.*)

41. The Chicago and Rock Island Railroad Company and Railroad Bridge Company cannot lawfully enter upon and use, for the purpose of a road, or for any other object, the military reservation of Rock island, under pretence of authority from the State of Illinois.—(6 : 670.)

42. An act of Congress giving to railroad companies a right of way through the public lands does not apply to or include the military reservation of Rock island.

II.—OF INDIAN LANDS.

1. The President of the United States may properly give his consent and approval to the conveyance by will made by Indians La Gros and Waiseskea, his daughter, to General Tipton, to four sections of land reserved to said La Gros in the treaty with the chiefs and warriors of the Miamies, concluded 23d October, 1826, subject to all legal questions in respect to the capacity and right to make conveyances by will, and to the execution, validity, and effect of those instruments.—(2: 631.)

2. Whether Indian reservees are capable in law of devising their reservations to third persons in any case, *query*.—(*Ibid.*)

3. A general approval endorsed on an Indian's petition for authority to alienate his reserve under the treaty with the Ottowas, &c., of the 29th August, 1821, is a valid consent, such having in 1822 been the mode adopted by the President for the exercise of his supervision.—(3: 209.)

4. Transfers of reservations by assignees whose assignments express them as a firm, are not valid when executed by one member thereof, but only when executed by all, unless the partner assigning exhibit authority to assign from all.—(3: 423.)

5. But where the reservee assigned to a firm, as to M., W., P. & Co., and the transfer by the firm was assigned in that manner, the assignment is valid, and the patent may issue to the assignee.—(*Ibid.*)

6. Where there are two assignors, and the names of both to the assignment are in the same handwriting, the assignment is invalid as to him who did not sign, unless the other exhibit authority.—(*Ibid.*)

7. The names of assignors need not be written in full in assignments of Creek Indian contracts; and the fact that they do not import a consideration, does not render them insufficient.—(4: 85.)

8. As the official acts of President Van Buren and his successor in office, in relation to the confirmation of sales of reservations under the treaty of Dancing Rabbit Creek, were predicated on a construction of that instrument which forbids certain sales, and as certain questions arise which ought to be adjudicated, it is recommended that a case to test the validity of sales made by the commissioner be brought before the Supreme Court.—(4: 495.)

III.—GRANT OF LANDS FROM UNITED STATES TO THE SEVERAL STATES
FOR PUBLIC PURPOSES.

1. The State of Ohio having refused to obligate herself to complete the canal within a reasonable time or to construct it further than the avails of the lands proposed to be granted her by the United States will do so, and as the act of Congress did not authorize the grant upon such conditions, the executive department cannot properly make the transfer.—(2 : 550.)

2. If the general government shall make the transfer after the manifesto of Ohio as to her obligations, it will have no right to call on her either to complete the contemplated work or to restore the money for which the lands may sell.—(*Ibid.*)

3. The deficiency of lands granted Ohio in act of 29th May, 1830, to make up the full quantity previously granted for the construction of a canal from Lake Erie to the Wabash, must be supplied from the alternate sections reserved to the United States, or out of other lands in the neighborhood near to the canal.—(3 : 552.)

4. Those parts of sections which are cut by the parallel line five miles distant from the canal may be located ; and quantities equal to the computed area of the cut sections may be located according to any of the usually recognized minor subdivisions of a section among the alternate sections accruing to the State along the exterior limits of the belt.—(*Ibid.*)

5. If obstacles shall be found to exist to the location of sufficient land on the exterior limits of the belt in minor divisions, the complement may be made up from full alternate sections.—(*Ibid.*)

6. The Commissioner of the General Land Office properly refused to issue a patent for land entered by Governor Shannon, in Ohio, and withdrawn from private entry in order to provide for executing the grant by Congress, by act of 24th May, 1828, of lands to the State of Ohio, for the purpose of aiding that State to extend the Miami canal from Dayton to Lake Erie, because it did not appear whether or not the land for which the patent was claimed was situated within the limits of the reservations, and because, if it was, the requisite notice had not been given by the register and receiver, as provided for in the regulations concerning the public lands.—(3 : 650.)

7. Whatever might, under other circumstances, have been the effect of a non-compliance on the part of Indiana with the provisions of the 2d section of the act of 27th May, 1824, upon the right of the State to ninety feet of land on each side of the Wabash and Erie canal, the forfeiture has been waived by the passage of the acts of 2d March,

1827, 27th February, 1841, 3d March, 1845, and 9th May, 1848, recognizing the continuing efficacy of the original grant, and evincing the intent to waive every antecedent cause of forfeiture to which the act of 1824 may have been subject; so that the State of Indiana has a title to the ninety feet on each side of the said canal as absolute as she would have had in the contingency of a full performance.—(5: 179.)

8. Such of the feeders of said canal as are navigable, are to be regarded as constituent portions of the work contemplated in the acts of Congress, and are comprehended in the grants for its construction.—(*Ibid.*)

9. The grant of alternate sections of land on Des Moines river to Iowa, by the act of 8th August, 1846, extends the entire length of the stream as well above as below Raccoon Fork.—(5: 240.)

10. The purpose of the grant was to improve the navigation of the said river from its mouth to the Raccoon Fork; but the grant itself is not limited to the section to be thus improved.—(*Ibid.*)

11. But the question was disposed of by a former Secretary of the Treasury while the Land Office belonged to his department, and the subject is now *res judicata* and beyond the control of the Secretary of the Interior.—(*Ibid.*)

12. The act of Congress of 8th August, 1846, granting to the Territory of Iowa, for the purpose of aiding to improve the navigation of the Des Moines river from its mouth to the Raccoon Fork, one equal moiety in alternate sections of the public lands, in a strip five miles in width on each side of said river, to be selected, &c., subject to the approval of the Secretary of the Treasury, did not include the land above Raccoon Fork.—(5: 390.)

13. The opinion of the Secretary of the Treasury on this subject, expressed on the 2d March, 1849, has no obligatory effect on the power of his successor to reject the selections made under it, in the event of a disagreement as to the proper construction of the act.—(*Ibid.*)

14. A survey, by which the Chicago branch of the railroad from Chicago to Mobile was to diverge from the main track at a point not north of the parallel of thirty-nine and a half degrees north latitude, is in accordance with the act of 20th September, 1850.—(5: 518.)

15. The United States granted to Illinois, by act of 20th September, 1850, in aid of the railroad from Chicago to Mobile, every alternate section of land designated by even numbers of six sections in width on each side of said road and branches; but the claim for six sections for every linear mile of the road and its branches, including all its sinuosities and deflections from a straight line, is not tenable.—(*Ibid.*)

16. By an act of Congress, passed in 1833, 138,996 acres of land were granted to Wisconsin in aid of a canal; on the condition that if it was not completed within ten years the State should be liable to the United States for all moneys received upon the sale of the land, at a rate not less than \$2 50 per acre. After disposing of all but 13,564 acres, the canal was incomplete and its construction abandoned: *Held*, that for all the land so disposed of the State was responsible to the United States in money, which a deduction from the 500,000 acres granted in 1841 could not off-set.—(5: 574.)

17. The act of 20th September, 1850, granting the right of way and land to the States of Illinois, Mississippi, and Alabama, in aid of a railroad from Chicago to Mobile, does not grant a right of way through the States of Kentucky and Tennessee.—(5: 603.)

18. No part of the sections within the Chickasaw country can be claimed by Mississippi under the grant, but an equivalent is allowable.—(*Ibid.*)

19. Under an act of Congress, granting to the State of Michigan a certain number of sections of land for the use of a university therein, the State selected, applied for, and received the requisite number of sections, some of the sections, thus deliberately selected, being fractional sections: *Held*, that the State cannot revise its selections, and obtain additional lands to make the sum total of acres what it would have been if all the selections had been complete sections.—(6: 725.)

20. In general, a lessee has the right to underlet, unless there be a covenant to the contrary in the original lease.—(7: 598.)

21. Congress, in 1846, for the purpose of improving the navigation of the river Des Moines “from its mouth to the Raccoon Fork,” granted to the Territory of Iowa alternate sections of land “in a strip five miles in width on each side of said river.”

As construed by the government at the time and as accepted by the State of Iowa, this grant extended only to the Raccoon Fork.

Subsequently to this, the Secretary for the time being (Walker) expressed an opinion that the grant extended up the river to its source; but went out of office the next day without this opinion having yet received execution.

The succeeding Secretary (Ewing) entertained a different opinion, and refused to approve selections above the fork.

Reference being made to the Attorney General (Johnson) he expressed opinion that the grant extended to the source of the river; but the Secretary did not act on that opinion.

Reference was then made to the succeeding Attorney General, (Crittenden,) who held that the grant did not extend above the fork.

The Secretary (Stuart) entertained and officially expressed the same opinion; but, without changing his opinion, and in his order expressly saying it was unchanged, he ordered selections to be allowed above the fork, up "to the north boundary of the State."

On question of the duty of the present Secretary (McClelland) in these circumstance, it is *held*: That the true construction of the act, and its intention, were to grant lands from the mouth of the river Des Moines to the Raccoon Fork and no further.—(7: 691.)

22. Even if, by construction heretofore, the grant be extended above the fork, it cannot pass beyond the limits of the State of Iowa into Minnesota.—(*Ibid.*)

23. The opinion expressed by Secretary Walker being opinion only, did not conclude any of his successors or bind the government.—(*Ibid.*)

24. The action of Secretary Stuart cannot be reversed by his successors in so far as regards selections made and approved by him, but is not obligatory any further on himself or his successors.—(*Ibid.*)

25. The opinion of the Attorney General for the time being is in terms advisory to the Secretary who calls for it; but it is obligatory as the law of the case, unless, on appeal by such Secretary to the common superior of himself and the Attorney General, namely, the President of the United States, it be by the latter overruled.—(*Ibid.*)

26. In the present state of this question, the actual Secretary is free to elect either to act on the opinion of Secretary Walker as construed by Secretary Stuart and approve up to the north boundary of the State and no higher, or to return to the true and original construction of the act, refusing to allow further selections above the Raccoon Fork.—(*Ibid.*)

27. But the Secretary cannot lawfully acquiesce in and abide by the rule of action of Secretary Stuart, unless that rule be also accepted by the State of Iowa; it no more binds one than the other; and, unless the State extinguish all claim to land above its north boundary, the Secretary is bound to refuse to permit selections above the Raccoon Fork.—(*Ibid.*)

H A B E A S C O R P U S'.

1. A writ of *habeas corpus* may be awarded to bring up an American subject unlawfully detained on board a foreign ship-of-war ; the commander being fully within the reach of, and amenable to, the usual jurisdiction of the State where he happens to be.—(1 : 47.)

2. The fugitive slave act of 1850 is not in conflict with the provisions of the Constitution in relation to the writ of *habeas corpus*.—(5 : 254.)

3. James Collier, being indicted in the district court of the northern district of California on the charge of feloniously converting to his own use public money, intrusted to him as collector of San Francisco, and being arrested in the State of Ohio by warrant of the district judge of the United States in order to be carried to California for trial, was taken from the United States marshal by *habeas corpus ad subjiciendum* granted by a judge of the State of Ohio.

Held, that the act of the State court was an act of unlawful interference with the jurisdiction of the courts of the United States.—(6 : 103.)

4. When a party is lawfully in custody under judicial authority having apparent jurisdiction of the subject-matter, no other court is collaterally to take jurisdiction of the case under cover of the writ of *habeas corpus ad subjiciendum*, even as between courts of the same sovereignty or jurisdiction.—(*Ibid.*)

5. *A fortiori*, a prisoner cannot be withdrawn from the jurisdiction of a State by *habeas corpus* issued by the courts of the United States, nor from that of the United States by *habeas corpus* issued by the courts of a State.—(*Ibid.*)

6. When a person is under arrest for any cause on the warrant of a competent judicial authority of the United States—such person cannot lawfully be discharged on *habeas corpus* by the courts of a State, and *vice versa*.—(6 : 713.)

7. The act of Congress of September 18, 1853, entitled “An act to amend, and supplementary to, the act entitled an act respecting fugitives from justice, and persons escaping from the service of their masters,” is a valid and constitutional act.—(*Ibid.*)

8. Certain persons being under arrest in the State of Wisconsin by

proper judicial authority of the United States, charged with obstructing the execution of the acts of Congress in the case of a fugitive from service, were discharged from arrest, on *habeas corpus*, by the supreme court of the State, for alleged unconstitutionality of the extradition act: *Held*, that such decision requires to be reviewed on writ of error by the Supreme Court of the United States.—(*Ibid.*)

H A R B O R S .

1. The right and title to the lake-shore of the great lakes is in the several States, not in the United States.—(6 : 172.)

2. In general, breakwaters and other harbor improvements constructed by the United States, of late years, have been constructed without purchase of land and cession of jurisdiction from the several States in which the works are placed, and the land under them belongs to the respective States.—(*Ibid.*)

3. Lawful authority exists for the protection of the works thus constructed from pillage or appropriation by individuals or corporations.—(*Ibid.*)

4. Obstructions to navigation in the navigable waters of the United States, whether by States or by individuals, constitute acts of perpreture.

There is remedy in such case by *ex officio* information in the name of the Attorney General of the United States.—(*Ibid.*)

5. The Topographical Bureau, in charge of the pier and breakwater constructed by the United States for the improvement of the harbor of Cleveland, may lawfully enter into contract for the use of the same by railway companies.—(6 : 199.)

6. The banks and shores of navigable waters, whether sea, lake, or river, in any of the States, belong either to the State or to individuals, as the case may be, and not to the United States.—(7 : 314.)

7. When by act of Congress a pier or breakwater is constructed for the improvement of a harbor, no right to the land on which it is constructed accrues to the United States by that fact alone, and without purchase and cession from the State.—(*Ibid.*)

8. If, in consequence of any such construction, land is made by accretion, such accretion belongs to the owner of the land to which it attaches, and not to the United States.—(*Ibid.*)

9. Congress, in 1846, for the purpose of of the river Des Moines "from its mouth to the Raccoon Fork," granted to the Territory of Iowa alternate sections of land "in a strip five miles in width on each side of said river."

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Reference was then made to the succeeding Attorney General, (Crittenden,) who held that the grant did not extend above the fork.

The Secretary (Stuart) entertained and officially expressed the same opinion; but, without changing his opinion, and in his order expressly saying it was unchanged, he ordered selections to be allowed above the fork, up "to the north boundary of the State."

On question of the duty of the present Secretary (McClelland) in these circumstances: it is *held*, that the true construction of the act and its intention, were to grant lands from the mouth of the river Des Moines to the Raccoon Fork, and no further.—(7: 691.)

10. Even if, by construction heretofore, the grant be extended above the fork, it cannot pass beyond the limits of the State of Iowa into Minnesota.—(*Ibid.*)

11. The opinion expressed by Secretary Walker being opinion only, did not conclude any of his successors or bind the government.—(*Ibid.*)

12. The action of Secretary Stuart cannot be reversed by his successor in so far as regards selections made and approved by him, but is not obligatory any further on himself or his successors.—(*Ibid.*)

13. The opinion of the Attorney General for the time being is in terms advisory to the Secretary who calls for it; but it is obligatory as the law of the case, unless, on appeal by such Secretary to the common superior of himself and the Attorney General, namely, the President of the United States, it be by the latter overruled.—(*Ibid.*)

14. In the present state of this question, the actual Secretary is free to elect either to act on the opinion of Secretary Walker as construed

by Secretary Stuart and approve up to the north boundary of the State and no higher, or to return to the true and original construction of the act, refusing to allow further selections above the Raccoon Fork.—(*Ibid.*)

15. But the Secretary cannot lawfully acquiesce in and abide by the rule of action of Secretary Stuart; unless that rule be also accepted by the State of Iowa, it no more binds one than the other; and, unless the State extinguish all claim to land above its north boundary, the Secretary is bound to refuse to permit selections above the Raccoon Fork.—(*Ibid.*)

HOSPITAL.

1. The government hospital for the insane is designed only for the use of the army and navy, and for such other persons as may be residents of the District of Columbia at the time of becoming insane.—(7: 450.)

ILLINOIS.

1. A survey, by which the Chicago branch of the railroad from Chicago to Mobile was to diverge from the main track at a point not north of the parallel of thirty-nine and a half degrees north latitude, is in accordance with the act of 20th September, 1850.—(5: 518.)

2. The United States granted to Illinois, by act of 20th September, 1850, in aid of the railroad from Chicago to Mobile, every alternate section of land designated by even numbers of six sections in width on each side of said road and branches; but the claim to six sections for every linear mile of the road and its branches, including all its sinuosities and deflections from a straight line, is not tenable.—(*Ibid.*)

3. The act of 20th September, 1850, granting the right of way and land to the States of Illinois, Mississippi, and Alabama, in aid of a railroad from Chicago to Mobile, does not grant a right of way through the States of Kentucky and Tennessee.—(5: 603.)

4. No part of the sections within the Chickasaw country can be claimed by Mississippi under the grant, but an equivalent is allowable.—(*Ibid.*)

INDIANS.¹

-
- I. GENERALLY.
 - II. THEIR CIVIL POWERS.
 - III. TREATIES WITH INDIAN TRIBES.
 - IV. AS TO INDIAN RESERVATIONS.
 - V. INDIAN COURTS.
-

I.—GENERALLY.

1. A right of occupancy during pleasure has always been conceded by Europeans to the North American Indians; (6 Cranch, 121; 8 Wheat., 548;) wherefore, the question whether purchasers from the State of Massachusetts may enter upon the Seneca lands, depends altogether on the character of the title which the latter retain in them.—(1: 465.)

2. No citizen of the United States can obtain exemption from the laws of the United States which regulate intercourse with the Indians by entering their territory within our limits and becoming one of them by adoption.—(2: 402.)

3. Lands occupied by chiefs and heads of families, under the treaty of 24th March, 1832, with the Creek Indians, cannot be entered upon by white settlers without the consent of the United States; therefore, the President may employ military force to expel intruders.—(2: 574.)

4. The stipulation contained in the treaty of March, 1836, with the Ottawa and Chippewa Indians, for the right of hunting on the land ceded, and the other usual privileges of occupancy, until the land should be required for settlement, reserved its use for all the purposes of Indian occupancy as the same then existed.—(3: 206.)

5. Sales by the Creeks, where purchasers, either by force or fraud, abstract from them the purchase money, are fraudulent and void.—(3: 259.)

¹ As to the relations between the United States and the Indian tribes, see *Worcester vs. Georgia*, 6 Pet. 515. See also *American Fur Company vs. United States*, 2 Pet. 358; *Mitchel vs. United States*, 9 Pet. 711; *Lattimer's Lessee vs. Poteet*, 14 Pet. 4; *United States vs. Fernandez*, 10 Pet. 303; *United States vs. Brooks*, 10 How. 442; *Ladiga vs. Roland*, 2 How. 581; *Marsh vs. Brooks*, 14 How. 513; *United States vs. Ritchie*, 17 How., 525.

6. So, also, are sales approved by the President where the reservee was personated by other Indians, and patents may be withheld.—(*Ibid.*)

7. A public war, within the Constitution and the rules and articles of war, has existed with the Seminoles since the day Congress recognized their hostilities and appropriated money to suppress them.—(3 : 307.)

8. The Cherokee fund is not liable for damages arising from the non-fulfilment by the government of contracts made for the removal of, and supplies for, the Cherokee Indians.—(3 : 431.)

9. Although the claim of an attorney for the Cherokees cannot be paid out of funds due them under the 9th article of the treaty, yet, if the department shall be satisfied that the contract between him and his principal is free from fraud, and his claim is for a just compensation for services rendered, the department ought to recognize him as having an interest in the fund and pay him accordingly.—(3 : 504.)

10. Payments may be made directly to the Indians, yet care should be taken that those who have rendered them service in collecting evidence, &c., be not defrauded.—(*Ibid.*)

11. The Chickasaw invested stocks belonging to the fund created by the treaty of October 20, 1832, cannot be transferred to the Choctaws in payment of the land purchased of them, without the previous consent of the President and Senate.—(3 : 591.)

12. The general assent of the President and Senate to the stipulations of the convention between the Chickasaws and Choctaws, by which the former were to pay the latter five hundred and thirty thousand dollars, cannot be regarded as such an assent as to authorize an application of the funds of the Chickasaws to the payment suggested.—(*Ibid.*)

13. Indians at peace with the United States are in no received sense of the word “an enemy,” and cannot be judicially considered as embraced within it.—(4 : 81.)

14. The accounts of the Chickasaw fund are within the 4th section of the act of March 3, 1845, making appropriations for civil and diplomatic expenses of government, and having been once passed upon, cannot be reconsidered without the authority of law.—(4 : 369.)

15. The commissioners to carry into effect the treaty with the Choctaws did not have authority to take proof of any claim in favor of an assignee of an Indian who transferred his claim within the five years mentioned in the 9th section of the act of August 23, 1842, inasmuch as they were expressly denied any authority to recognize or allow to

an Indian, or to the assignee of an Indian, any claim which had been so assigned, in whole or in part.—(4: 381.)

16. The five per cent. Alabama stocks transferred from the Chickasaw to the Choctaw fund in compliance with the treaty of 24th March, 1837, between those nations did not fully come up to what the Choctaws might have reasonably required.—(4: 419.)

17. But as the consent of the Senate was and is requisite to any transfer or investment for them, it will be requisite to the making up of the deficiency.—(*Ibid.*)

18. The Cherokees remaining in the States of North Carolina and Tennessee are not entitled to the commutation for removal and subsistence given by the 8th article of the treaty to those who have removed west of the Mississippi.—(4: 435.)

19. They can only receive their due portion of personal benefits accruing under the treaty for their claims, improvements, and *per capita*, whenever an appropriation shall have been made to carry it into effect.—(*Ibid.*)

20. The certificate of an award to a claimant under the treaty of 1835-6 with the Cherokees cannot be so amended as to include a claim presented and allowed under the 13th within the third supplemental article of that convention.—(4: 597.)

21. All Cherokee reservees who were obliged to abandon their reservations by the laws of the State in which they were situated, were expressly provided for in the 13th article of the treaty, and expressly excluded from the third article of the supplement.—(*Ibid.*)

22. The claim of the Board of Commissioners for Foreign Missions for their missionary establishments in the country ceded to the United States by the Cherokee treaties of 1835-6, cannot be paid and properly charged to the Cherokee nation, or deducted out of their funds held by the United States, without the adjudication and certificate of the Board of Commissioners provided for in 17th article of the treaty.—(5: 368.)

23. The valuation of the agents alone is not sufficient. The agents to make the valuations were convenient auxiliaries to the Board of Commissioners appointed by the President under the 17th article of the treaty; but they are not substitutes for that board.—(*Ibid.*)

24. The moneys appropriated by the acts of 30th September, 1850, and 27th February, 1851, are to be paid to the Indians referred to in the 12th and 15th articles of the treaty of 1835, and in the 9th and 10th articles of the treaty of 1846 concluded with the Cherokees.—(5: 320.)

25. The distribution is to be made *per capita* and equally among all the individuals residing east, and also all those residing west other than the "old settlers" found to be in existence at the time of the distribution, each being considered as entitled in his own right, and not by representation of another who is dead; and the payment of these distribution shares is to be made to the individuals entitled, if of competent age; the shares of children to be paid to heads of families to which they belong, whether those heads of families be male or female, father or mother, or persons standing *in loco parentis*.—(*Ibid.*)

26. The whole number of the Cherokees to whom payments are to be made *per capita*, and the identity of the persons to whom distribution is to be made, are questions of fact, to be determined in such manner as the Secretary of the Interior, by and with the advice and consent of the President, shall deem discreet.—(*Ibid.*)

27. Under the act of 3d March, 1852, it is competent for the superintendent of Indian affairs in California to examine claims and accounts for furnishing provisions to the Indians. (5 : 572.)

28. No part of the money appropriated for *per capita* payments to the Cherokees can be paid otherwise than by an equal distribution of it among those Indians individually.—(See opinion of 16th of June, 1851.)—(5 : 502.)

29. Investments in behalf of the Indians, provided by treaty to be placed in stocks of the United States bearing interest at five per cent., may, in the absence of any such stock, be invested in stocks bearing interest not less than five per cent., but only stocks of the United States.—(6 : 2.)

30. In general, acts of Congress are applicable, according to the subject-matter, in all parts of the United States.—(7 : 293.)

31. Where it is not so, the fact is an exceptional one, and the exception is indicated by words either of exclusion or of inclusion in the act.—(*Ibid.*)

32. The acts of Congress regulating intercourse with the Indians are in full force in Oregon.—(*Ibid.*)

33. When questions arise as to the applicability, in Oregon, of a particular clause of those acts, the question depends on the subject, and is wholly independent of any reference to a supposed test of the convenience or the assumed rights of the whites as against the Indians.—(*Ibid.*)

II.—THEIR CIVIL POWERS.

1. The Cherokee nation of Indians have not the right to impose taxes on persons trading among them under the authority of the United States.—(1: 645.)

2. Neither the history and condition of the Indians, the relations which the United States bear to them, nor the treaties which subsist between them and our government, permits the power of taxation to be considered as one between equal sovereigns.—(*Ibid.*)

3. Trade with the Cherokees has been provided for by treaty stipulations, giving to Congress the sole and exclusive right of regulating trade with them, and managing their affairs as shall be deemed proper. The right thus conferred on the United States is sole and exclusive; wherefore, neither the Cherokees nor any other nation had the right thereafter to touch the subject which was thus solely and exclusively given to the United States.—(*Ibid.*)

4. Indian tribes have not been conceded the natural capacity to hold absolute title to lands, except in cases specially provided for by treaty; wherefore, the title of the Brothertown Indians to the land secured to them by the treaties with the Menomonies is not a fee simple, but only such a right of occupancy as was previously possessed by the Menomonies themselves.—(3: 322.)

5. Heads of Creek families who otherwise would be entitled to a patent for land in Alabama, have not forfeited their right to the same by having become residents and citizens of Georgia before the expiration of five years from the time when the reservation was selected.—(3: 585.)

6. The Senecas are entitled to the possession of their hunting grounds, as well as their cultivated lands, until the time limited by the treaty with them for their voluntary removal.—(3: 624.)

7. The patents heretofore issued to the parents of Choctaw children, for such children, must stand for what they shall be found by the judiciary to be worth; but patents for reservations to Indian children, under the 14th article of the treaty, hereafter to be issued, should be made to the children and not to their parents; care being taken that they show on their face that they are issued to the children independently of their father, in fulfilment of the 14th article of the treaty of Dancing Rabbit creek.—(4: 107.)

8. The President's consent to sales of land reserved to the Indians by the Pottowatomie treaty of 16th October, 1826, and the Miami treaty, concluded on the 23d of the same month, is only necessary in

cases where the sales shall have been made by the reservees.—(4: 529.)

9. Where the reservees shall have died, and sales are made under an order of court granted pursuant to the laws of the State in which the lands are situated, the President's consent is not necessary to their validity.—(*Ibid.*)

10. Those treaties not only extinguished the Indian right of occupancy, but granted the reserved lands as effectually to all intents and purposes as if patents had been issued to the so called reservees; and as the State laws are operative upon lands thus held in fee simple, and have applied to those in question by causing their transfer for the payment of the debts of their decedent owner, the title of the purchaser is perfect without the President's consent.—(*Ibid.*)

11. But as the rights of the heirs cannot be affected injuriously by the giving of the executive consent, and as the sale in this case appears to have been fairly made and for a satisfactory price, and as it may possibly relieve the title from doubt, and thereby prevent litigation, it may nevertheless be given.—(*Ibid.*)

12. The claims of Cherokees for the value of alleged pre-emption rights, asserted under the treaty of 1835-6 with that nation, are inadmissible under the convention as the same was ratified.—(4: 560.)

13. Reservees, under the treaty with the Cherokees, who disposed of their lands, are not entitled to compensation for improvements thereon, as they passed with the soil.—(4: 580.)

14. The Menomonee Indians have no reasonable pretensions to lands west of Black river, which they indicated, in the treaty of 1825, as the extent of their claims in that direction, nor to lands beyond the limits which they specified and claimed in the treaty of 1831; and, as the United States have since purchased them of other tribes, the government is not required to pay for them again.—(5: 31.)

15. Nor have those Indians a title to the large triangular tract within those limits adjacent to, and west of, the line established between them and the Chippewas by the treaty of 1827, they having relinquished all claims to the Chippewas.—(*Ibid.*)

16. But subject to these restrictions they may cross the Wisconsin river into the territory claimed by the Winnebagoes, and show a better title than their's if they have one.—(*Ibid.*)

17. It is not the duty of the Executive to pay over the moneys appropriated in the 3d section of the civil and diplomatic appropriation bill of 1848 to the Creek nation of Indians, except on the con-

dition that said nation shall first execute a full discharge of principal and interest on account of the sum of \$250,000.—(5 : 46.)

18. The form of the release of the claim of the Creeks upon the government, which has been submitted to the Commissioner of Indian Affairs, answers the requirements of the 3d section of the act of 12th of August, 1848, if it satisfactorily appear that the chiefs and headmen who have executed it are in fact the chiefs and headmen of the Creeks, and constitute a majority of their national council.—(5 : 79.)

19. The power of attorney, authorizing Joseph Bryan to receive certain moneys from the United States, is sufficient for its purpose if it appear that it was executed by those chiefs and headmen who had authority to execute such an instrument.—(*Ibid.*)

20. The moneys appropriated in execution of the treaty of 24th of January, 1826, with the Creeks, may be paid to the chiefs and headmen of that nation upon their executing a release in full for all claims for principal and interest on account of the emigration of 1,300 Indians, &c.—(5 : 98.)

21. Had Congress intended to exact a release from the individual Indians, they would have doubtless expressed that intention in the law.—(*Ibid.*)

22. It is doubtful whether Indian annuities, granted by the government, ought to be regarded as legally assignable, unless made so by law.—(5 : 285.)

23. All executory contracts of individual Indians for the payment of money or fees are null by statute, but not of necessity the executory contracts of a nation or tribe of Indians.—(6 : 49.)

24. The President may or not, in his discretion, recognize the pecuniary engagements of a tribe of Indians.—(*Ibid.*)

25. The President will examine into all such contracts, and confirm them or not, according to what appears the legality and sufficiency of their consideration, and of their relation to the interests of the Indians.—(*Ibid.*)

26. It is in the discretion of the President whether, and at what time, if at all, engagements of indebtedness made by tribes of Indians to citizens of the United States shall be allowed and paid by the government.—(6 : 462.)

27. A deed of land purporting to be by a certain Indian, and approved by a former President, proves not to have been executed by him : *Held*, that the new President may treat that deed as a nullity, and approve a new deed duly executed by such Indian.—(6 : 711.)

28. Indians are not citizens of the United States, but domestic subjects.—(7: 746.)

29. The general statutes of naturalization do not apply to Indians; but they may be naturalized by special act of Congress or by treaty.—(*Ibid.*)

30. Indians are not capable of pre-empting the public lands of the United States.—(*Ibid.*)

31. Half-breed Indians are to be treated as Indians in all respects, so long as they retain their tribal relations.—(*Ibid.*)

32. Indians and half-breed Indians do not become citizens of the United States by being declared electors by any one of the States.—(*Ibid.*)

33. *Query*: Whether half-breed Indians may become citizens by voluntarily leaving their tribal connexion, and without any special provision of law in their behalf.—(*Ibid.*)

III.—TREATIES WITH INDIAN TRIBES.

1. The Seneca Indians must be protected in the enjoyment of exclusive possession of their lands as defined and bounded in the treaty of Canandaigua, until they have voluntarily relinquished it.—(1: 465.)

2. So long as they remain in possession of the lands defined in the treaty, neither the government of the United States, nor individuals, can lawfully enter upon them, but by consent freely rendered on a full understanding of the case.—(*Ibid.*)

3. By the first treaty between the United States and the Cherokee Indians, (at Hopewell,) the lands they occupied were allotted to them for hunting-grounds, without conferring any permanent interest in the soil; and the fee remained in the State within whose jurisdictional limits the land was.—(2: 322.)

4. All the rights which the United States acquired under the treaties of 1817 and 1828 with the Cherokees inured to the benefit of the State of Georgia; for the United States were bound by the articles of cession between the United States and Georgia, of April, 1802, to extinguish the Indian title for "the use of Georgia."—(*Ibid.*)—(See *Johnson vs. Macintosh*, 8 Wheat., 543; *Fletcher vs. Peck*, 6 Cranch, 87.)

5. The 14th article of the treaty with the Choctaws provides for those who desire to remain and become citizens of the United States, and their title is made to depend upon a residence of five years on the land with the intention of becoming citizens.—(2: 462.)

6. The 19th article of said treaty provides absolutely for those who may not desire to remain and become citizens of the United States.—(*Ibid.*)

7. As the treaty with Miamies contained an agreement on the part of the United States to grant to certain persons each a quarter section of land out of the territory ceded by it, to be located by the President, no other parcels than those defined can be substituted for them ; for the President must execute the treaty according to its stipulations.—(2 : 563.)

8. The three Pottowatomie treaties of 1832 may be considered as forming one transaction ; and, except where special provision is otherwise made, the lands agreed by any one of them to be granted by the United States to individuals may be located within the limits of the cession made by any one of the three, provided the party entitled to the grant assents thereto, and the President so directs.—(3 : 33.)

9. A widow keeping house, and having children or other persons with her, is the head of a family within the meaning of the fifth article of the treaty of the Chickasaws of 24th of May, 1834. If her children, or other persons residing with her, however, are provided for in the 6th or 8th articles, they cannot be included in the family enumeration.—(3 : 34.)

10. Widows keeping house without children or other persons residing with them are, if they own slaves, entitled to the section or half section given by the fifth article, according to the number of their slaves.—(*Ibid.*)

11. Under the second clause of the supplement to the treaty of Dancing Rabbit creek, Allen Yates and wife are each entitled to two sections of land.—(3 : 106.)

12. The residence of heads of Choctaw families who in due time signified to the agent their intention to remain and become citizens of the United States, or a valid excuse for non-residence, entitles them to grants pursuant to the treaty ; and such grants when made are paramount to pre-emption and all other claims.—(3 : 365.)

13. The War Department, however, should endeavor to avoid interference with the rights of settlers whenever it can be done consistently with the provisions of the treaty.—(*Ibid.*)

14. The treaty of 1837 with the Winnebagoes provided that certain payments, therein stipulated to be made, should be made by the President of the United States, and with which the judiciary cannot rightfully interfere ; and the agents appointed by the President may pro-

ceed to make the payments, in disregard of any writs of injunction which the judiciary may allow.—(3: 471.)

15. Under the Cherokee treaty of New Echota, for the adjustment of all the claims provided for therein, the President has power to appoint new commissioners.—(4: 73.)

16. The expense of such commission cannot be defrayed out of the Cherokee fund, but must be from appropriations to be made by Congress.—(*Ibid.*)

17. The same Indian cannot be allowed a claim under both the 14th and the 19th articles of the treaty of Dancing Rabbit creek.—(4: 452.)

18. A claimant under the 14th article of the treaty, who complied with its requisitions, and who was expelled from his land by the force or was induced to leave it by the fraud of the government or its agents, by virtue of a sale of his land made by the government, has not forfeited his rights under the treaty and the law of 1842.—(*Ibid.*)

19. The certificate of the Indian agent in reference to the facts upon which the Choctaw claims are based is not conclusive testimony for any purpose beyond the act of Congress.—(*Ibid.*)

20. The Attorney General intended, in his opinion of November 18, 1845, to advise that a claim, under the 14th section of the treaty and act of 1842, might be perfected even though the Indian had temporarily lost the possession by the tortious acts of unauthorized individuals, he having in all other respects complied with the requisitions of law.—(4: 513.)

21. By the act of 27th February, 1851, it was provided that all Indian treaties thereafter negotiated should be negotiated only by such officers and agents of the Indian department as the President should designate for that purpose.—(5: 305.)

22. That act applies as well to treaties negotiated, but not concluded at the date of its passage, as to those not then authorized. It peremptorily required all Indian treaties thereafter to be made to be negotiated by the agents and officers designated by the law.—(*Ibid.*)

23. Hence the commissioners to negotiate treaties with the Mississippi and St. Peter Sioux and half-breeds for the extinguishment of their title to lands in Minnesota, appointed on the 1st of February, 1851, were superseded by the said law.—(*Ibid.*)

24. The third section of the act went into effect immediately upon its passage.—(*Ibid.*)

25. Acts of Congress directing the payment of annuity money to individuals of Miami Indians residing in the State of Indiana, are not

in contravention of treaty stipulations between the United States and the Miami Indians.—(6: 440.)

26. Indian treaties are only required to be printed for promulgation in one newspaper, and that in the State or Territory to which the subject-matter of the treaty belongs.—(6: 627.)

27. By treaty between the United States and several tribes of Indians in the Territory of Kansas, the latter ceded certain lands to the United States on condition that a part of the same should be held in trust by the United States to be sold at public auction for the benefit of such Indians.

Afterwards, by act of Congress, all the lands in the Territory, to which the Indian title had been extinguished, were made subject to the laws of pre-emption: *Held*, that the provision does not include the lands thus reserved by the treaties for public sale for the benefit of the Indians.—(6: 658.)

28. A professed award for the value of an improvement under the provisions of the Cherokee treaty of 1835, which was made by the commissioners in blank as to the sum, cannot be paid as an award in virtue of the act of July 31, 1834, making appropriations for the execution of that treaty.—(7: 54.)

29. The Choctaws and Chickasaws, who, in 1837, formed a political union by an agreement between the two nations, submitted to and ratified by the Senate of the United States, cannot dissolve that union except in like manner by convention approved by the Senate and the President of the United States.—(7: 142.)

IV.—AS TO INDIAN RESERVATIONS.

1. The reservations to certain Indians, contained in the treaty of 20th October, 1832, with the Pottowatomies, excepted out certain lands from the general cession, which did not, therefore, pass; consequently the title thereof remains as it was before the treaty.—(2: 587.)

2. Being held under the original title, the occupants cannot convey them to individuals, but can only make a valid cession thereof to the United States.—(*Ibid.*)

3. Where a reservee, entitled under the treaty of Dancing Rabbit creek to two sections of land—the one to include his improvement and the other to be a float—had built and paid for a house on section 31, in township 16, range 1 east, and had no other improvements in the nation, but resided with his mother on another lot: *Held*, that his

residence with his mother does not deprive him of the right to the said section.—(2: 617.)

4. Under that treaty, where two reservees shall be found to have improvements on the same lot, the same may be divided, and the deficiency made up from contiguous land not otherwise appropriated.—(*Ibid.*)

5. The President may properly give his consent and approval to the conveyance by will made by Indians La Gros and Waises-kea, his daughter, to General Tipton, to four sections of land, reserved to said La Gros in the treaty with the chiefs and warriors of the Miamies, concluded 23d October, 1826, subject to all legal questions in respect to the capacity and right to make conveyances by will, and to the execution, validity, and effect of those instruments.—(2: 631.)

6. Whether Indian reservees are capable in law of devising their reservations to third persons in any case, *quere*.—(*Ibid.*)

7. The twenty-nine sections reserved to Creeks under the treaty of 24th March, 1832, may be lawfully located either before or after assignment thereof by the tribe, except in respect to location before assignment. Should any of those sections be located to persons who possess improvements not already allotted to them under other provisions in the treaty, such persons shall be entitled to insist that the tracts assigned to them shall be located in such manner as to include their improvements.—(2: 696.)

8. As many surviving Indian wives as were heads of families at the making of the Chickasaw treaty of 1834, (though wives of the same Indian,) are entitled to the reservations made in the 5th article thereof.—(3: 41.)

9. The reservees named in the supplement to the Choctaw treaty, of September 27, 1830, may, with the approbation of the President, sell and convey their reserves.—(3: 48.)

10. Where the grant of a reservation is the essence of the treaty, the direction as to the manner in which the same shall be located ought not to be so construed as to defeat the grant.—(3: 113.)

11. Locations of sections, or parts of sections, should be made by taking whole, half, or quarter sections, as the case may be, without breaking up the legal divisions or disturbing sectional lines.—(3: 114.)

12. In this case, the reservee is entitled to the half section on which his improvement is located, and the whole of that chosen for the balance.—(*Ibid.*)

13. The reservees under the Creek treaty of 1814, and the act of 1817, have not power to lease their lands; the renting for a term of

years and removal from the State may be regarded as an abandonment of their reservations.—(3: 230.)

14. On their abandonment, the title becomes immediately vested in the United States, by operation of law, and is to be then treated as if then for the first time acquired by the treaty.—(*Ibid.*)

15. The moneys received from the sale of reservations located for Creek orphans, under the treaty with the Creeks of March 24, 1832, were properly brought into the treasury, and may be drawn out for investment or payment whenever the President shall direct.—(3: 238.)

16. The first and second classes of Indian reservees provided for in the 13th article of the treaty of December, 1835, with the Cherokees, are entitled to compensation in money, in lieu of their interests, notwithstanding the supplementary articles concluded after the refusal of the President to allow pre-emptions.—(3: 297.)

17. In respect to the third class there is yet doubt; yet the Attorney General, on the whole, concludes that the reservees of that class are also entitled, individually, to compensation in money.—(*Ibid.*)

18. The compensation to the first and second classes must be paid from the \$600,000 set apart in the supplementary articles.—(*Ibid.*)

19. Under the treaties of 1817 and 1819 with the Cherokees, the reservees therein could not properly locate their lands outside the limits of the cessions respectively; but as some of the reservations of 1817 were located within the lands ceded in 1819, and were included in the uncaded lands under the latter treaty, these cases are to stand on the same grounds as other reservations under the treaty of 1817, and equally entitled, under the treaties of 1835 and 1836, to compensation with those who located within the cession of 1817.—(3: 326.)

20. But no provision has been made for those whose reservations under treaties of 1817 and 1819, were located within the cessions of 1835 and 1836; and as such reservations are not within the 13th article of the treaty of 1835, 1836, they were unauthorized, and are not to be paid for as improved lands; but the holders are only entitled to pay for their improvements.—(*Ibid.*)

21. Reservations claimed under former treaties not being ceded by the first article of the last, are not within the words nor intentions of the ninth article of the last; hence the reservees who may be entitled to compensation under the thirteenth, cannot claim pay under the ninth article for improvements on the same reservations.—(*Ibid.*)

22. But those who were to receive grants for their reservations are entitled to pay for the soil and their improvements thereon.—(*Ibid.*)

23. The children of the reservees, under the eighth article of the treaty of 1817, were entitled to reservations in fee simple.—(*Ibid.*)

24. The removal of the Creek reservees from their reserved lands, without the intention of returning and occupying them as their place of residence, is an abandonment, which gives the right of possession and occupancy to the United States, and the right of the United States, under such circumstances, accrues and becomes complete immediately upon such abandonment.—(3: 389.)

25. The only requisites to a title to reservations under the treaty of Dancing Rabbit creek, indicated in the treaty, are, that the persons applying be Choctaws, and heads of families, and shall signify their intention of becoming citizens of the States, within six months from the ratification of the said treaty.—(3: 408.)

26. The Wyandot nation of Indians have the authority to treat with the United States respecting the reservation of twelve miles square, at and about Upper Sandusky, in the State of Ohio, as the supplement to the treaty of 1817 reinvested them with their title in trust.—(3: 458.)

27. An assignment by P. P. Pitchlynn of a reservation in the treaty in favor of Peter Pitchlynn, where there is no doubt of the identity of the person is good, as the law knows of but one Christian name.—(3: 467.)

28. Where a Choctaw reservee conveyed his reservation to D, in trust, to sell and apply the proceeds to the payment of a debt owing by the reservee to A and R, who, thereupon, sold a portion of the land, and with the proceeds paid a part of the said debt; and at this stage of the affair the reservee died, leaving two children, whose guardian, under pretence that he was acting for the children, bought the residue at a sum far below its value, who, after taking H into partnership with him, conjointly with him sold the land to Banks and Lewis, without the consent of the President, and refused to pay over any part of the proceeds to said children: *Held*, that the President ought not to give his approval to the sale to said Banks and Lewis, as it would probably deprive the children of their inheritance.—(3: 517.)

29. Where Creek reservees died within the five years, during which their reserves were to be withheld from sale, and the lawful administrators sold the reserves, and paid over the proceeds (less the expenses) to the Indian widows, as the heirs, and the question of other heirs being now raised, in opposition to the confirmation of the sales

to the purchasers, who have paid the consideration money therefor once in full: *Held*, that the purchasers are entitled to the confirmations which they ask, and should not be required to pay a second time any portion of the purchase money.—(3 : 578.)

30. If the distribution of the proceeds were illegal, it ought in no wise to affect the *bona fide* purchasers.—(*Ibid.*)

31. The approval by the President of the location of certain lots by reservees, under the Winnebago treaty of August 1, 1829, vests a title in the reservees that is superior to that of certain Polish exiles who located, April 18, 1836, under act of June 30, 1834.—(3 : 584.)

32. The President may properly confirm sales of Creek reservations, made by administrators pursuant to the orders of courts having jurisdiction, whether the distribution of the proceeds among the heirs shall have been correctly made or not ; provided the purchasers shall have paid in the purchase money in good faith to the administrators or legal representatives.—(3 : 596.)

33. But where purchasers have withheld any portion of the purchase-money on any pretence, or the administrators themselves were the purchasers and have not accounted for the purchase-money, sales ought not to be confirmed.—(*Ibid.*)

34. The approval of the President to a sale of a Choctaw reservation is required only to contracts between the Indian reservees and their vendees.—(4 : 37.)

35. The patents ought to issue to the first vendees in trust for the equitable proprietors, or subsequent assignees, and bear on their face a declaration of trust.—(*Ibid.*)

36. The President should confirm those sales of Creek reservations only where the law of the State of Alabama has been complied with—such having been the practice.—(4 : 75.)

37. The former opinion (36) on new facts stated, and assurances that the practice has not conformed to the opinions of Attorneys General Butler and Gilpin, reconsidered ; and it is *held* that in all cases where the provisions of the treaty have been fulfilled, the sales shown to have been fair, and the consideration adequate, the sales may be confirmed, even though, under the law of Alabama, they may have been informal and irregular.—(4 : 77.)

38. Congress did constitutionally confer original authority upon administrators to make sales, without reference to the law of Alabama.—(*Ibid.*)

39. The treaty of 1817 with the Cherokees gave to the heads of

Cherokee families an election to go, or stay and become citizens; and until their election to stay, the reservations do not vest in them or their children.—(4: 116.)

40. The President has power to cause the lands reserved for orphans under the treaty of Dancing Rabbit creek to be sold, and to cause patents to be issued to purchasers. He may, on application of the orphans for whom the provision was made, cause the proceeds of land located for them to be applied to some purpose beneficial to them; wherefore, the sales already made of these lands are valid.—(4: 326.)

41. Neither the wife of a white man, who entered a reservation to her under the treaty of 1817, and within the limits of the grant of North Carolina to the Cherokees in 1783, and the treaty of 1819 with the Cherokee agent, in her right, nor her children, are entitled to compensation for the value of such reservation, if it appear that the same were voluntarily sold and abandoned prior to the ratification of the treaty of 1835-'36.—(4: 615.)

42. The reservation in this case having been sold and abandoned long before the ratification of the said treaty, the claim made for its value ought to be rejected.—(*Ibid.*)

43. A Choctaw head of a family entitled, under the 14th article of the treaty of Dancing Rabbit creek, to a reservation of land, who gave the notice, made the claim, and continued the residence therein required, is entitled to a patent, although the agent, whose register a former executive declared to be the evidence in such cases, failed to make the necessary entry, inasmuch as a subsequent agent did make entry of the facts and location and certified them to the General Land Office.—(5: 251.)

44. The treaty under which the right has accrued is silent concerning any such register as that required to be kept by the agent—(*Ibid.*)

45. The President has the power to approve the sale of any of the reserves under the supplement to the Choctaw treaty of 1825, although the same is derived only by construing both instruments together as forming but one treaty.—(2: 465.)

46. The sale may be approved either before or after the survey, at the discretion of the President, who also has power to accept a relinquishment of title from any chief, and to pay fifty cents per acre.—(*Ibid.*)

V.—INDIAN COURTS.

1. The Choctaws have neither jurisdiction nor authority to pronounce and execute a sentence of death upon a slave of a white man re-

siding among them, for the reason that the treaty limits their power to the government of the Choctaw Nation of red people and their descendants.—(2: 693.)

2. As the district of country occupied by the Choctaws is within the territorial limits of the United States over which the sovereignty of the latter has been only partially relinquished, citizens of the United States cannot divest themselves of allegiance to our government by a residence among them, nor even by becoming members of the Choctaw Nation.—(*Ibid.*)

3. And the political relation of negro slaves owned by white men residing in the Choctaw country depends on that of their masters.—(*Ibid.*)

4. A white man, although he may have been adopted by Chickasaws or Choctaws, does not become subject in criminal matters to the jurisdiction of the courts of the Choctaw Nation.—(7: 174.)

5. But in matters of civil jurisdiction, arising within the nation, its courts have jurisdiction over a white man who has voluntarily made himself a Chickasaw by intermarriage and exercise of all the rights of a Chickasaw, and where the question concerns property the proceeds of a head-right granted to him as a Chickasaw.—(*Ibid.*)

INFORMERS.

1. Live oak timber cut in violation of law for the purpose of transportation is not subject to forfeiture, so as to give informers a right to a distributive portion of it; such timber being all the while, in law, the property of the United States.—(4: 247.)

2. Informers are only entitled to a share of the penalties and forfeitures recovered for the cutting, destroying, or removing live oak, red cedar, &c., from the public lands, not to any part of the timber.—(4: 339.)

INSANITY.

1. An act of resignation by an officer of the navy while insane is a nullity.—(6: 456.)

2. No person, not of the army or navy, are entitled to admission into the government hospital as indigent insane, unless, at the time of becoming insane, they are legal residents of the District.—(7: 450.)

INSOLVENCY.

1. The term "insolvent debtors," contained in the act of Congress of March 2, 1831, means persons who were in a state of known insolvency, manifested by some notorious act of bankruptcy on or prior to the 1st of January, 1831.—(2: 451.)

2. The release of one of two partners, or of one of two or more obligors in a custom-house bond, will discharge the other or others, unless the latter execute a proper instrument preserving their liability.—(*Ibid.*)

3. Applications must be made, and the oath or affirmation necessary must be taken, not by an attorney, but by the debtor himself.—(*Ibid.*)

4. Under act of 1832 it is not necessary that partners shall be insolvent debtors, within the meaning of the priority acts, in order to be entitled to relief. It is sufficient that they are unable to pay their debts to the United States.—(2: 552.)

¹ An insolvent debtor, who has received a certificate of discharge from arrest and imprisonment under a State insolvent law, is not entitled to be discharged from execution at the suit of the United States.—(*United States vs. Wilson*, 8 Wheat., 353.)

In the case of the *United States vs. Zerega*, lately argued in the district court for the southern district of New York, Mr. Justice Blatchford held that a certificate of discharge under the general bankrupt act of 1841 was a bar to a debt due the United States. The case will probably be reported in 2d Blatchford's reports.

INTERIOR DEPARTMENT.

1. The authority of the Secretary of the Interior to supervise the Patent Office comprehends the power to appoint such temporary clerks to be employed therein as shall be authorized by law, and to cause their salaries to be paid out of any money appropriated for that purpose.—(5: 283.)

2. The Commissioner of Patents, therefore, is subordinate to, under the superintendency of, and subject to the control of, the Secretary of the Interior, in the appointment and payment of such clerks; and his authority is the same whether the money disbursed be appropriated from fees or from the agricultural, or from any other fund.—(*Ibid.*)

3. The requisitions of the Superintendent of Public Printing are to be made by him directly on the Secretary of the Treasury, and do not require to be approved by the Secretary of the Interior.—(6: 228.)

4. The Secretary of the Interior is empowered by law to judge of the necessity of expenses of clerk hire and other expenses in the office of clerks of circuit and district courts where there is a surplus of fees above the statute allowance for salary, and to regulate the same in advance, subject to such modifications of amount, either by enlargement or diminution, and either periodical or occasional, as the satisfactory administration of justice in the several circuits or districts may require.—(7: 543.)

5. The question of the expediency of continuing or dismissing an appeal in the Supreme Court, on a suit involving alleged trespass upon or title of the public lands, belongs to the competency of the Secretary of the Interior, not of the Attorney General.—(7: 550.)

INTEREST.

I. GENERALLY.

II. WHEN THE GOVERNMENT WILL PAY INTEREST.

III. WHEN THE GOVERNMENT WILL NOT PAY INTEREST.

I.—GENERALLY.

1. Interest is in the nature of damages for withholding money which the party ought to pay, and would not, or could not; but where the holder of a claim omits for a long time to make application for payment, and the act of Congress directing payment is silent as to interest, he does not come within the reason of the rule.—(1: 268.)

2. Interest is not a thing of course; it is in no case a part of the debt, nor is it a necessary consequence of the debt. By the polity of many nations it is forbidden; and by those whose laws allow it in cases between individuals, it is not made a right in all. In cases of unliquidated damages it is in general disallowed; and the Georgia claims, being of that character, are excluded by the general rule.—(1: 554.)

3. The trustees of M. and S. who, having been unfortunate in the business of merchants at Norfolk, made an assignment in 1819 whilst owing the United States about \$19,000, (which sum was afterwards reduced by them and their trustees to \$10,240 65,) cannot properly claim that the detention of certain specie brought in by the Macedonian frigate in 1821 amounted to a payment upon the debt of the United States so as to extinguish interest.—(2: 214.)

4 Where treasury notes are issued under the act of the 12th of October, 1836, and placed in the hands of disbursing officers to meet public liabilities, interest does not begin to accrue thereon until they are actually issued by such officers.—(3: 296.)

5. The interest on the claim of the representatives of George Fisher, deceased, for property taken or destroyed by the troops of the United States, should be computed from the time of the taking or destruction.—(5: 71.)

6. In general, the government, which is always to be presumed ready and willing to discharge its obligations, pays no interest; yet,

from considerations of State policy, it has sometimes, as in the case of claims under the act of 1814.—(5: 105.)

7. The moneys advanced to the contractors for transporting the mails from New York to Chagres were so advanced as a favor and bounty to the enterprise, without provision for interest or repayment until the passage of the act of March 3, 1851; and under that act interest, at the rate of six per cent. per annum, is to be computed and charged, but only from the date of its passage.—(5: 356.)

8. As a general rule, the United States do not pay interest on any debts of the government.—(7: 523.)

9. The only exceptions are, where the government stipulates to pay interest, as in public loans, and where interest is given by act of Congress expressly, either by the name of interest or by that of damages.—(*Ibid.*)

10. Acts of Congress, authorizing the settlement of claims according to "equity" or "equity and justice" do not give interest; for, as between private individuals, there is no material difference in this respect between equity and law, and that expression does not change the result as regards the government.—(*Ibid.*)

11. Where a mail steamship company were bound by law, out of sums of money coming due to it from the government for mail service, to refund, with interest, certain advances made to the company, and by reason of the failure of Congress to make appropriations for the service the government was in default to the company: *Held*, that the latter was not bound to pay interest during the period of such default.—(7: 535.)

II.—WHEN THE GOVERNMENT WILL PAY INTEREST.

1. The United States were bound to Virginia, by the relation which subsists between the general and State governments, to provide the means of carrying on the war; and failing to make such provision, and Virginia herself having made it from her own resources, the same became a debt against the United States, which they were bound to reimburse. The rule concerning interest has been, that where a State supplied the moneys for expenditure from her own treasury, no interest has been allowed; but where a State, from the condition of her own finances, was obliged to borrow the money, and to thus incur a debt on which she herself became obligated to pay interest, interest has been allowed to her for indemnity.—(1: 723.)

2. In the case of Virginia, there is a special act authorizing the payment of interest, and prescribing the rules for computing it. In-

terest may be computed upon loans, or money borrowed and actually expended for the use and benefit of the United States during the late war with Great Britain; but shall not be computed on any sum which Virginia has not expended for the use and benefit of the United States, as evidenced by the amount refunded; nor upon any sums refunded or paid her subsequent to such refunding or payment.—(*Ibid.*)

3. It was the intention of Congress to reimburse to the State of Virginia all the interest which she had actually paid on account of loans made necessary, by her having taken the place of the United States in meeting the expenses of the war in that State; and although the money so borrowed may have been placed in the State treasury, and thereby blended with the State's revenue, yet if, from the revenues thus blended, a sum equal in amount to the sum borrowed was expended for the use of the United States, the State is nevertheless entitled to interest without proof that the very dollars borrowed were expended.—(*Ibid.*)

4. In like manner she is entitled to interest on loans made necessary by the exhaustion of the State treasury in taking up loans for the use of the United States.—(*Ibid.*)

5. The indemnification awarded by the Emperor of Russia to be paid by Great Britain for having violated the treaty of peace in taking and carrying away American slaves and other property involves not merely the return of the value of the specific property, but a compensation also for the subsequent and wrongful detention of it in the nature of damages; and since this will be a work of great labor and time, interest according may be taken as a necessary part of the indemnification awarded.—(2: 28.)

6. There is no law forbidding accounting officers from allowing interest to claimants, if it shall appear that interest is justly due them.—(2: 463.)

7. Interest on a demand against the United States is properly allowable where the claimant, in a suit against him, obtained a judicial decision in his favor, and the act of Congress providing for its payment proceeded upon the knowledge that interest had been allowed by the court.—(3: 294.)

8. Aside from the reports in the case, the law which requires the accounting officers to recognize the judicial decision as settling the true construction of the contract and the relative rights of the parties under the same, also requires the payment of interest.—(*Ibid.*)

9. Where the treasurer of the United States issued a draft upon a deposit bank to a navy agent, who sold it in order to raise money for

necessary expenditures, and the draft was afterwards presented and dishonored: *Held*, that it was proper for the Treasury Department to pay the interest and costs incident to the dishonor, and the amount from the original appropriation under which it was drawn.—(3: 320.)

10. In the case of James Semple, chargé d'affaires to New Grenada, who had drawn a draft for his salary, which was dishonored at the banking-house in London, and the holder subjected to delay thereby, and the drawer to the payment of interest: *Held*, that the government is liable for such interest, and that Mr. Semple is liable to account to the government for interest on the amount over and above his salary realized by him on the negotiation of such draft from the time he was notified of the mistake.—(4: 299.)

11. In general the government, which is always to be presumed ready and willing to discharge its obligations, pays no interest; yet, from considerations of State policy, it has sometimes allowed it, as in the case of claims under the act of 1814.—(5: 105.)

12. In the case of the claim of the heirs of Thomas Ewel for commutation for military services, interest as well as the principal may be allowed.—(5: 138.)

13. George Galphin, in his lifetime and prior to 1773, was a trader with the Creeks and Cherokees in the then colony of Georgia, and at the date of the treaty concluded in that year between said Indians and the government of great Britain, ceding a large district of country to the latter, in trust, for the payment of their debts to traders from the proceeds, &c., a creditor of said Indians to a large amount. After the appointment of commissioners by Great Britain to liquidate such debts, he obtained from them in 1775 a proper certificate of liquidation of his demand, but, in consequence of his subsequent disloyalty to that government in the revolution which immediately followed, was never paid according to the stipulations of the said treaty, but retained such certificate unsatisfied until his death. His claim was then preferred against Georgia, and subsequently against the United States, to whom a large tract of said land had been ceded, until 1848, when Congress ordered it to be paid; and, pursuant to its order, the principal was paid by the Secretary of the Treasury: *Held*, that the lands ceded by the treaty of 1773 were charged with this debt; that the same was subsequently assumed by the United States; that the claim is analogous to others upon which interest has been allowed; and that the claimant is entitled to interest from the date of the certificate of said commissioners liquidating the demand.—(5: 227.)

14. Interest on claims for transportation, under the act 2d June, 1848, should be allowed up to the time of payment at the treasury, provided the claimant presents his application without unnecessary delay.—(5: 399.)

15. The act did not create debts bearing interest redeemable only at the pleasure of the creditor.—(*Ibid.*)

16. Interest should be allowed the State of Florida upon all sums expended and obligations contracted for supplies and services of local troops called into service in 1849, by and under the authorities of said State, where it shall appear that said State has paid, lost, or incurred interest on that account.—(5: 455.)

III.—WHEN THE GOVERNMENT WILL NOT PAY INTEREST.

1. Interest on certificates founded upon indents of interest, issued under act of August 4, 1790, is not allowable, and the courts would embarrass a system of finance by a determination in favor of interest for the year 1791.—(1: 17.)

2. The Georgia claims, settled by commissioners under the treaty of the 8th January, 1821, with the Creek nation of Indians, should be liquidated on the same principle that they would have been against the Indians, and interest thereon should not be allowed.—(1: 550.)

3. Interest is not any part of a debt, nor a necessary consequence of a debt. By the polity of many nations it is forbidden; and by those whose laws allow it in any case, it is not made a right in all. In cases of unliquidated damages, it is in general disallowed; and the Georgia claims, being of that character, are excluded by the general rule.—1: 554.)

4. The Secretary of the Treasury has no authority to increase an allowance made by the Secretary of the Navy to certain citizens under the act of 26th April, 1822; and it would be an increase of it to give interest on the amount, or to assume it as a debt due at a day antecedent to the allowance. The allowance becomes a debt due from the United States only from the time it is made.—(1: 605.)

5. The people of Georgia are not entitled to interest, under the treaty of Indian Spring, on their claims against the Creek nation, the commissioner having made his award on such equitable principles.—(2: 110.)

6. No interest is allowable by the accounting officers on the appropriation of five years' full pay as a commutation of the memorialists for half-pay for life to their father in his lifetime, made by act of 29th May, 1830.—(2: 390.)

7. Interest cannot be legally claimed upon the stocks issued by the State of Maryland, and redeemable at the pleasure of the State, which are held in trust for the Chickasaws, from the time when the funds were provided by the State for the redemption of the principal.—(3: 495.)

8. A legislative provision ought to be regarded as notice by a State to the holders of its stock sufficient to bar any legal claim to subsequent interest.—(*Ibid.*)

9. Interest on claims for losses occasioned by troops in the service of the United States is not allowable, unless the same shall be expressly provided for in the act of Congress under which the claim is authorized to be paid.—(3: 635.)

10. A claimant is not entitled to interest as against the government on account of the omission of the executive officers to allow his claim when presented.—(4: 14.)

11. Under the settled practice of the government, interest will not be allowed on items admitted in the settlement of a claim from a mistaken view of the law.—(4: 136.)

12. The Secretary of the Treasury is not authorized to allow interest on the claims presented under the treaty with Spain, and the acts of 1823 and 1834, it not having been the usage of the government to do so, nor does its duty to the claimants, under the circumstances, require it.—(4: 286.)

13. The executive department is not authorized to allow interest upon a draft drawn by the American chargé d'affaires to Peru upon the treasury for his outfit, before the same had been appropriated by Congress, because of the delay occurring in respect to its payment.—(5: 27.)

14. Interest is not chargeable against the Bank of the United States, nor the trustees thereof, upon the demands in question, from and after the 11th of July, 1843, when the sheriff sold the assets of said bank in satisfaction of the demands of the United States, until the month of January, 1846, when the funds were invested.—(5: 304.)

15. A draft for \$20,000 was legally drawn by a purser in California, on the Navy Department, and endorsed to the order of B., who presented it for payment on the 5th of April, 1850; but it was not paid till the 9th of August following: *Held*, that B., having accepted payment and surrendered the bill, has no claim for interest and twenty per cent. damages.—(5: 444.)

16. Such bill is to be considered as a foreign bill of exchange, and a protest was necessary before even the drawer or endorser could be holden for damages.—(*Ibid.*)

JURISDICTION.

1. Jurisdiction is acquired by the United States by the consent of a State to the purchase of land within the same for constitutional uses of the Union.—(7: 628.)

2. Phrases in legislative acts of the States retaining concurrent jurisdiction for certain purposes do not impair the federal jurisdiction conferred by the Constitution.—(*Ibid.*)

(See *Courts*, *III.*)

LANDS—PUBLIC.

- I. GENERALLY ; AND HEREIN OF GOVERNMENT LANDS OTHER THAN PUBLIC.
 - II. EXTINGUISHMENT OF INDIAN TITLES.
 - III. SURVEYS.
 - 1. GENERALLY.
 - 2. SURVEYOR GENERAL.
 - IV. DISPOSAL OF LANDS BY THE GOVERNMENT.
 - 1. DONATIONS.
 - 2. PUBLIC SALES.
 - 3. PRIVATE SALES.
 - 4. PRE-EMPTION.
 - 5. BOUNTIES FOR MILITARY SERVICES ; AND HEREIN OF BOUNTY LAND WARRANTS AND THEIR LOCATION.
 - V. LAND OFFICES.
 - 1. GENERALLY.
 - 2. GENERAL LAND OFFICE.
 - 3. REGISTERS AND RECEIVERS.
 - VI. PATENTS.
 - 1. GENERALLY.
 - 2. ISSUE OF PATENTS.
 - 3. VALIDITY OF.
 - 4. LOCATION.
 - 5. CERTIFICATES.
 - 6. CONFIRMATION OF TITLE.
 - VII. TRESPASSES ON PUBLIC LANDS.
 - 1. GENERALLY.
 - 2. REMOVAL OF TRESPASSERS.
 - VIII. IMPROVEMENTS ON LANDS.
 - IX. AS TO SALT SPRINGS AND MINERALS.
 - X. SALE OF LANDS FOR TAXES.
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I.—GENERALLY ; AND HEREIN OF GOVERNMENT LANDS OTHER THAN PUBLIC.

1. The act of 3d of March, 1791, directing the laying out of tracts of land to the inhabitants of Vincennes, did not authorize either the President or the governor to make conveyances for the allotments ; and, if patents are necessary to confirm the titles, it yet remains with Congress to direct by whom they shall be issued.—(1 : 44.)

2. Grants made by the Spanish government after the ratification of the treaty by which the land was ceded to the United States, are void ; and though a patent were dated before, unless it were delivered before, it fails to carry the title.—(1 : 108.)

3. Although *prima facie* every deed may be presumed to have been delivered on the day of its date, the presumption may be removed by proof.—(*Ibid.*)

4. The United States cannot appropriate land granted for the express and single purpose of a light-house site, to any use wholly unconnected with the object of the grant, without violating the spirit and terms of the cession.—(1 : 321.)

5. The United States being in possession of the island of Pea Patch, under title derived from the Duke of York, may require a prosecutor to show title in himself, before any proof of title need be deduced ; and a prosecutor, under deed taken for its western boundary, the east side of the Delaware river and bay, can never reach the Pea Patch.—(1 : 331.)

6. The Ursuline nuns, of New Orleans, have possessory title to their enclosure that cannot be disturbed.—(1 : 350.)

7. The defendant's title to Yazoo lands having been derived from the United States, his main ground of defence will be the cession by Georgia to the United States, the several acts of Congress touching the claims and the proceedings of commissioners under them.—(2 : 35.)

8. The laws on the subject of public lands are all *in pari materiâ*, and are all to be construed as an insulated act upon its own letter, but as having relation to the general system.—(2 : 44.)

9. P. Bonhomme has no claim to any lands within the military reservation on which Fort Gratiot stands, which the Executive will recognize. Whatever right the priority of his location may have given him, the same has not been recognized by Congress, under whose authority only can a patent issue for so much of the land embraced in his claim as lies without the limits of the military reservations.—(2 : 207.)

10. Acts of Congress should be so construed as to render their several provisions operative and in accordance with the intent of the makers of the law.—(2 : 305.)

11. Acts *in pari materiâ* are to be considered as one law ; and those of May 24, 1828, and of January 6, 1829, are such statutes so far as settlers on land west of the territorial limits of Arkansas are affected.—(2 : 306.)

12. From the papers submitted in relation to the Pea Patch, the title of the United States derived from the State of Delaware is a doubtful one; but the Attorney General finds it impossible in the present state of the case to give a decisive opinion.—(2 : 590.)

13. Fractional quarter sections selected under the special acts of March 2, 1831, and July 4, 1832, must each be taken instead of an entire quarter section.—(3 : 148.)

14. Additional selections to make the complement in quantity of ten sections, need a confirmatory act of Congress.—(*Ibid.*)

15. The confirmees under the treaty with France, under which their (Missouri) land claims are asserted, do not claim the *dominium* of the civil law, but the doing of what is necessary to complete the title and convey property. The lands to which they lay claim form a part of the public domain; and, although the United States acknowledge themselves bound to provide for them, the whole subject remains in contract.—(3 : 720.)

16. The sale of the missionary lot to the Baptist mission being irregular and unsatisfactory to the Catholic mission, it should be rescinded, and the property placed in the situation in which it existed before any proceedings were had in regard to it, and be resold, upon such notice and terms as shall be satisfactory to all the parties concerned.—(4 : 255.)

17. In a certain class of cases where the 16th section of the act of May 20, 1826, has been interfered with by confirmed private claims and donations, selections of other lands may be made in lieu thereof by the Treasury Department.—(4 : 322.)

18. Concessions of crown lands to individuals in Louisiana, executed in conformity with the laws and usages of the government of Spain whilst that territory was under her dominion, and which were reserved in the treaty of Paris of 1803, must, in general, be held to have been limited to such surveys, descriptions, and demarcations as were sufficient to sever them from the public domain.—(4 : 643.)

19. The title of Maurice Conway to the lands known as the "Houmas tract," situate on the left bank of the Mississippi river above New Orleans, which were once possessed by the Bayou Goula and Houmas Indians, and granted with their assent by Governors Unzaga and Galvez, in front and back concessions, prior to the cession of Louisiana to the United States, was valid to the extent of the surveys and locations, (to wit: 42 arpents from the said river,) and no farther.—(*Ibid.*)

20. The two patents issued by the Executive on the 22d of August,

1844, upon the Donaldson, Scott, and Clarke claims, so called, were unauthorized by law, and are void.—(*Ibid.*)

21. But as the original concessions cannot be recognized to have conveyed any lands beyond the limit of forty-two arpens from the Mississippi river, those in the rear thereof, and which had not been otherwise granted, were vested by the treaty in the United States.—(*Ibid.*)

22. The proceedings in the circuit court of the county of Nassau (Florida) will have vested the United States with the title to a tract of land on Amelia island when the conveyance is executed.—(5 : 239.)

23. The accretion of several acres of land at the mouth of the Chicago river, formed from earth washed there by the waters of Lake Michigan, and deposited against a pier constructed by the general government for the improvement of the harbor, must be regarded as belonging to the United States.—(5 : 264.)

24. The title of M. to land on which the United States have erected a fort at the mouth of Bay Desprez and Lake Borgne, and lands adjoining, is invalid.—(5 : 402.)

25. The Solicitor of the Treasury should commence an action in behalf of the government to try the title, as M., being in possession, cannot, if he would, institute a suit against the United States to quiet his claim.—(*Ibid.*)

26. A patent issued to F., which was founded on a Virginia land warrant, located on the shore of Chesapeake bay, including the shore between high and low tide. It also included an alluvion formed since the grant to the United States, by Virginia, of 250 acres of land, embracing Old Point Comfort, whereby his location nearly surrounded Fort Monroe: *Held*, That although such alluvion would be an increase of the 250 acres originally granted to the United States, yet by the law of nations, and by the statutes of Virginia of 1679, 1819, and 1849, the title to the same is in the United States.—(5 : 412.)

27. The rule of the English common law that private rights to lands bordering on the sea, or a bay, or a river where there is a flux and reflux of the sea, should be limited to high-water mark, has not obtained in Virginia since the 31st Charles II.—(*Ibid.*)

28. Natural boundaries prevail over artificial boundaries.—(*Ibid.*)

29. The title of the United States to lands in San Francisco, noted on the plan of the town as government reserves, appears to be valid.—(5 : 447.)

30. The authorities of San Francisco originally derived their title to the town site by an official deed from General Kearney, civil and

military governor, in which deed the reservations were made. If that conveyance was valid, then the title of the government to the reserves is valid; if invalid, then all the lands therein mentioned belong to the United States under the treaty of Guadalupe Hidalgo.—(*Ibid.*)

31. To avoid litigation it is advised that a deed be procured of the authorities of San Francisco, relinquishing all claim to these reserves. (*Ibid.*)

32. Land purchased or reserved by the United States for light-houses, barracks, navy yards, and other like purposes, are not included in the designation of "public lands."—(5: 578.)

33. By the act of 3d March, 1819, providing for the sale of such "military sites" as are found useless for military purposes, the Secretary of War is authorized to sell *a part* of the land included in the site of the armory at Harper's Ferry.—(5: 549.)

34. Decision as to the quantity of land to be reserved for public use, and the places where to be located, rests in the discretion of the President, subject to such regulations as may, from time to time, be provided by law, either as to the particular public use, the quantity, or the subsequent disposal thereof for private use.—(6: 156.)

35. At present, the statute of limitation as to quality is not exceeding six hundred and forty acres for forts, and twenty acres for any other public use. Subject to this condition, the military reservation of Fort Vancouver, in the Territory of Oregon, is valid, notwithstanding any pre-existing donation claim of an inhabitant of the Territory, and notwithstanding the provisional government of Oregon had located the county seat of justice at Fort Vancouver.—(*Ibid.*)

36. The right and title to the lake shore of the great lakes is in the several States, not in the United States.—(6: 172.)

37. The original reservation in the plat of the city of Washington for the President's mansion extended south to the bank of the stream called Goose creek.—(6: 444.)

38. There is no public street lawfully existing across that reservation south of the President's mansion.—(*Ibid.*)

39. The persons in the employment of the United States, actually residing in the limits of the armory at Harper's Ferry, do not possess the civil and political rights, nor are they subject to the tax and other obligations, of citizens of the State of Virginia.—(6: 577.)

40. The Chicago and Rock Island Railroad Company and Railroad Bridge Company cannot lawfully enter upon and use, for the purpose

of a road, or for any other object, the military reservation of Rock island, under pretence of authority from the State of Iowa.—(6: 670.)

41. An act of Congress giving to railroad companies a right of way through the public lands does not apply to or include the military reservation of Rock island.—(*Ibid.*)

42. The banks and shores of navigable waters, whether sea, lake, or river, in any of the States, belong either to the State or to individuals, as the case may be, and not to the United States.—(7: 314.)

43. When by act of Congress a pier or breakwater is constructed for the improvement of a harbor, no right to the land on which it is constructed accrues to the United States by that fact alone, and without purchase and cession from the State.—(*Ibid.*)

44. If, in consequence of any such construction, land is made by accretion, such accretion belongs to the owner of the land to which it attaches, and not to the United States.—(*Ibid.*)

45. At the foundation of the government's title to city lots in the city of Washington are trust deeds from the original proprietors of the land to Thomas Beall and John M. Gantt, who thus held the fee in trust for the original proprietors and for the United States.—(7: 355.)

46. By force of a legislative act of the State of Maryland of 1791, the fee of these lots became vested in the several *cestui que trusts*, whether the original grantors, the United States, or purchasers under either.—(*Ibid.*)

47. By force of the same act of the State of Maryland, as construed by subsequent acts of Congress, the power to convey the government lots became vested in different statute officers of the United States, namely, first, a board of commissioners, then a superintendent, and, finally, the Commissioner of Public Buildings.—(*Ibid.*)

48. All conveyances heretofore made by the board of commissioners, the superintendent, or the commissioner, suffice to pass the title, provided the conveyances were otherwise valid, and the sales were made by the direction of, and in the time and manner prescribed by, the President of the United States.—(*Ibid.*)

49. The same power is held by the present commissioner.—(*Ibid.*)

50. Suggestions as to the validity of the title of the United States to the Indian reservation of the Tejon in California.—(7: 744.)

II.—EXTINGUISHMENT OF INDIAN TITLES.

1. By the treaty of Dancing Rabbit creek, if any portion of a section, on which a claimant, under the 14th article of said treaty, resided at the date thereof, had been sold by the United States prior to the

passage of the law of 1842, the commissioners were not authorized to award to said claimant scrip instead of land, unless it was then impossible to give said claimant the quantity of land to which he was entitled, including his improvements or any part thereof, on any adjoining lands.—(4: 244.)

2. All assignments, or agreements to assign claims, under the Choctaw treaty of Dancing Rabbit creek, previous to the expiration of five years from the ratification thereof, are causes of forfeiture, without reference to the consideration upon which they may be founded; and these matters are specially cognizable by the commissioners, whose judgment respecting such assignments is conclusive.—(4: 346.)

III.—SURVEYS.

1. GENERALLY.
 2. SURVEYOR GENERAL.
-

1.—GENERALLY.

1. It is competent for the Secretary of the Treasury to deduct the expenses of surveys of the lands of the United States lying within the State of Ohio, before computing the three per cent. to which that State is entitled under the act of March 3, 1803, and to calculate the per centage for Ohio on the balance.—(1: 640.)

2. Claimants are liable for the expenses of surveys of private land claims only where there had been no survey of the claim under the French or Spanish governments previous to the delivery of possession of the territory; and where surveys are deemed necessary by the commissioners to enable them to decide on the validity of the claims.—(1: 655.)

3. A concession is a valid claim under the 1st section of the act of March, 2, 1805, to the whole amount of the survey dated April 10, 1796.—(1: 657.)

4. A concession confirmed under the 4th section of act of March 3, 1807, where the commissioners issued a certificate for eight hundred arpens, according to the original plat, without ordering a re-survey under the 7th section, is good for the quantity contained in the plat, though it exceeded the quantity specified.—(*Ibid.*)

5. The first section of the act of April 12, 1814, confirmed the claim according to the survey, where a survey had been made. A

mistake of the commissioners was immaterial, as the confirmation was affected by the act solely. The commissioners only reported upon, did not decide, the claims.—(*Ibid.*)

6. The third section required surveys only where none had been made by the foreign government.—(*Ibid.*)

7. The President had authority to direct a survey of the public land lying south of the thirty-first degree of latitude.—(2: 57.)

8. The surveyor south of Tennessee and the surveyor of the State of Alabama are the proper officers to authenticate the township plats, and not the principal deputy, under the act of March 3, 1819.—(*Ibid.*)

9. A survey of section 16, in fraud of the treaties, does not divest the title of the United States, and consequently does not give the State a right to select another section in lieu thereof.—(2: 360.)

10. Where a part of section sixteen is disposed of the State is not bound to select the residue, but may take an equivalent on other sections. The act of selection of a section in lieu of section sixteen is that by which the tract becomes appropriated for school purposes.—(*Ibid.*)

2.—SURVEYOR GENERAL.

1. The surveyor of public lands in the territories of Illinois and Missouri, under the power conferred to engage surveyors as his deputies, and to perform all and singular the duties which were required by law to be performed by the surveyor general, may let the work by contract.—(1: 661.)

2. It is his duty to fix the compensation of the deputy surveyors, chain-bearers and axemen; and it is not perceived how this can be done but by contract, for no deputy surveyor is under any obligation to accept or retain his place, unless the compensation shall be satisfactory.—(*Ibid.*)

3. Fixing compensation by contract is doing all the law requires of the surveyor in that respect; he fixes the compensation.—(*Ibid.*)

4. The government will not complain of a practice which it has sanctioned, and which does not appear to have been attended with any injurious consequences.—(*Ibid.*)

5. The act of April 24, 1820, and the instructions issued under it, directing the manner of subdividing fractional sections containing over 160 acres, did not require the absolute platting of every quarter or half-quarter of which the section was susceptible; but contemplated the exercise of discretion so as to prevent small and inconvenient fractions of a fractional section.—(3: 281.)

6. It is the duty of the surveyors general to subdivide fractional sections in conformity to law, and without reference to the existence of the pre-emption acts of May 29, 1830, and June 19, 1834.—(*Ibid.*)

7. It is the duty of surveyors general to divide fractional sections containing over 160 acres into lots approaching as nearly as practicable to the form and quantity of half-quarter sections; and it is competent for the department to direct the performance of the duty.—(3: 284.)

8. The survey is to be made without reference to pre-emptions; but pre-emptors are entitled to a legal survey.—(*Ibid.*)

9. The surveyor of lands of the United States south of Tennessee was authorized to cause the surveys to be made (of the country west of the Perdido;) and his approval of the plats thereof is a sufficient authentication of both the survey and the plats.—(3: 697.)

10. There has been no form for the surveyor's approval of plats prescribed. The substance and spirit of the whole policy in respect to approvals were, that the surveyor should not only cause the lands to be surveyed and platted, but should see to it, and satisfy himself that the plats corresponded with the field notes; and when satisfied to return the plats to the proper office.—(*Ibid.*)

IV.—DISPOSAL OF LANDS BY THE GOVERNMENT.

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1. DONATIONS.
 2. PUBLIC SALES.
 3. PRIVATE SALES.
 4. PRE-EMPTION.
 5. BOUNTIES FOR MILITARY SERVICES, (AND HEREIN OF BOUNTY LAND WARRANTS, AND THEIR LOCATION.)
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1.—DONATIONS.

1. Under the act of 3d March, 1791, donating lands to heads of families, those persons only who returned to the Territory within five years from the passing of the act are entitled to its benefits.—(1: 124.)

2. The States to which five hundred thousand acres of land were given for internal improvements are not entitled to take any land to which pre-emption rights exist.—(4: 71.)

2.—PUBLIC SALES.

1. Although the act of 3d March, 1803, was the affirmance of a compact between the United States and the State of Ohio, it must have been within the contemplation of the contracting parties at the time that Congress should retain the power of regulating the terms of the sales to be made.—(1: 640.)

2. The act of 22d May, 1836, for the relief of Alfred Flournoy, did not authorize an entry of reverted lands before they had been again offered at public sale; nor lands relinquished after the passage of the act.—(2: 44.)

3. Sales of lands excepted from sale by act of Congress are void for want of authority.—(2: 186.)

4. The decision of a court as to the invalidity of the claim causing the exception will not correct the error.—(*Ibid.*)

5. A purchaser of a tract, as to part of which there was authority to sell, and as to the other part there was not, has the option to avoid the entire contract, or to receive a patent for such part as could be sold.—(*Ibid.*)

6. Lands struck off on the last day of a public sale, and not paid for, are not subject to private entry prior to being again offered at public sale. Such tracts are not unsold lands at the close of the public sale, but are to be regarded as reverted lands.—(2: 200.)

7. The several acts of 3d March, 1819, of May, 1824, and of 24th May, 1828, authorize the correction only of entries of lands by money purchasers; and entries by Carolina volunteers are not such.—(2: 341.)

8. A negro cannot take a reservation under the Cherokee treaties of July, 1817, and February, 1819, although the husband of an Indian woman.—(2: 360.)

9. The act of 3d March, 1819, extends only to such military sites as belonged to the United States at its date; and such sites when they have, or whenever they may, become useless for military purposes may be sold under said act, whether situated in a State or Territory.—(3: 108.)

10. The rule as to the extent of territory which may be sold is laid down by the Supreme Court in the case of *Mitchell et als. vs. The United States*, (9 Peters, 761.)—(*Ibid.*)

11. The first section of the act of 2d July, 1836, confirms sales that are fair and regular in all respects, other than those provided for in the second section. The Commissioner has to judge of the proof, and

may receive further evidence in support of the fairness and regularity of the claim.—(3 : 149.)

12. Where the purchase money is paid directly to the Treasurer, the specific tract of land must be stated the same as if applied for at the office of the land district, and the same form must be pursued.—(3 : 150.)

13. Where a lot of land offered at auction at a public sale of land was struck off to A, who advanced the money, and took a receipt therefor, and B on the same day offered evidence to prove that he nodded to the auctioneer, and that his nod was equivalent to a bid for said land above that of A, and that thereupon the land officers put up the land again on a subsequent day, and struck off the same to C, who conveyed it to B, who disputes A's title: *Held*, that if B intended his nod at the first sale to be a bid above A, he should have promptly disclosed it at the time, and invoked the land officers to remedy the inobservance or neglect of the auctioneer; and that, as this was not done, the patent must issue to A, to whom it was struck off at the first sale.—(3 : 448.)

14. It has been the position of the United States since the delivery of the opinion of Mr. Wirt, that the acts of 26th March, 1804, erecting Louisiana into two territories, and that of the 2d March, 1805, for ascertaining and adjusting the titles and claims to lands within the Territory of Orleans and the district of Louisiana, extended to the country west of the Perdido, to which the United States have always assented, and at length enforced their right under the treaty with France in 1803, and that between the government and Spain in 1800.—(3 : 697.)

15. The Indian right of occupancy having been fairly extinguished by treaty, and the government having come to be in full and complete possession of the lands in question, it had become both expedient and necessary that they should be surveyed and put into market.—(*Ibid.*)

16. The surveyor of lands of the United States south of Tennessee was authorized to cause the surveys to be made; and his approval of the plats thereof is a sufficient authentication of both the survey and the plats.—(*Ibid.*)

17. The President had a discretionary authority to proclaim these lands for sale immediately upon being informed that the surveys were made and proper land officers appointed to conduct them.—(*Ibid.*)

18. Purchasers are chargeable with notice of the law respecting all former grants by Spain and France, and in relation to pre-emptions.—(*Ibid.*)

19. In the case of an erroneous sale, in any respect other than failure of consideration by reason of want of title in the United States, the Secretary of the Treasury has no power to refund the purchase money, but relief must be sought at the hands of Congress.—(*Ibid.*)

20. Nor ought a patent to issue so long as the surveys remain confused; but the same may be properly suspended until a report can be had, or the facts concerning the lands be more fully ascertained.—(*Ibid.*)

21. The great fundamental principal of our land sales is, that private entries shall never be permitted until after proclamation is made that the lands are in market.—(4: 167.)

22. Repayment of purchase money should be made in cases where the purchase of land from the United States is found to be void by reason of a prior sale, or by the confirmation or other legal establishment of a prior British, French, or Spanish grant, or for want of title in the United States from any other cause.—(4: 227.)

23. Instances where there is a deficiency in the quantity of land purchased, and where an entry has been made of land to which another had a pre-emption right, are cases falling within the terms of the act of 12th January, 1825, and call for repayment.—(*Ibid.*)

24. But in cases of error arising from miscalculations of the amount to be paid, where the money paid has not been returned by the receiver, the excess should not be paid from the treasury; but the error should be corrected by the receiver. Where, however, the excess or over payment shall have found its way into the treasury, it cannot be withdrawn except in strict fulfilment of the requisitions of law, which the "administrative power" cannot control.—(*Ibid.*)

25. The case of Wilson Shannon does not come within the provisions of the act of the 12th January, 1825, and, therefore, the department has no authority to refund to him.—(4: 253.)

26. Even though the funds of Shannon were not received into the public treasury, and it be conceded that the United States have no equitable claim upon them, there is no act authorizing repayment of money wrongfully or erroneously paid, except the act of 12th January, 1825, which applies to certain specified cases.—(*Ibid.*)

27. It would not do for the department to refund money which has erroneously found its way there, simply on the ground that it is just that it should be repaid, for the reason that it would require the department to disregard a most wholesome and salutary restraint, upon the due and strict observance of which the most important interests depend.—(*Ibid.*)

28. Where a section of public land was included with other lands

in the President's proclamation for sale, and the sale took place, but the section in question was not sold, the presumption is that such section was cried by the auctioneer; and an applicant to enter the same, at private sale, need not be required by the register to prove that it was actually cried in the hearing of the bidders.—(5: 476.)

29. An application for the purchase of land was rejected by the register, and the applicant then tendered the purchase money to the treasurer of the United States, who refused to receive it: *Held*, that the neglect of the applicant to appeal to the General Land Office was not an abandonment of his application.—*Lythe vs. Arkansas*, 9 How., 328.—(*Ibid.*)

3.—PRIVATE SALES.

1. Proof and entry may be made at any time within the life of the act of 29th May, 1830, of lands subject to private sale at its passage.—2: 367.

2. A claim entered by a *bona fide* purchaser, although at private entry and without notice, is not forfeited.—(*Ibid.*)

3. The right to enter back lots is not limited to proprietors whose lands front on navigable streams. If there be a perennial flow of water—they may be rivers, creeks, bayous, or water-courses, within the meaning of the law.—(3: 336.)

4. The lands of the Chickasaws were put on the same footing as the public domain, and are, therefore, not subject to private entry until the same shall have been proclaimed to be in market.—(4: 167.)

5. The great fundamental principle of our land sales is, that private entries shall never be permitted until after proclamation is made that the lands are in market.—(*Ibid.*)

6. The reason of this rule applies in all cases where, from any cause, land has been temporarily taken out of commerce.—(*Ibid.*)

7. The words of the 10th article of the treaty, concerning the gradual fall of the price, did not contemplate a fall to be regulated by mere lapse of time.—(*Ibid.*)

8. The plain sense of the provision is, that lands, after having, with due notice, been one year exposed in open market, at a fixed price, may be for another year offered at a reduced price, and so on.—(*Ibid.*)

9. But private entries are not in order until the land shall have been proclaimed to be, and shall have been, properly put in market. Lands which have never been in commerce at all cannot be treated, at the end of the term designated in the treaty with the Indians, as lands for which nobody would bid.—(4: 167.)

10. It is the duty of the executive to secure to all persons a fair and equal opportunity of purchasing the public lands.—(3: 274.)

11. Lands that have been temporarily withheld from private sale should not be allowed to be entered until suitable notice has been given of the removal of the cause of suspension.—(*Ibid.*)

12. The Treasury Department has no authority to require a certificate that notice has been given, or that lands are liable to entry; nor can the treasurer refuse pay for a specific tract, unless he have official evidence that it is not subject to sale.—(*Ibid.*)

13. The regulation, established by the Commissioner of the General Land Office, requiring holders of land warrants to make affidavit that there is no settlement on the land intended to be located, is inconsistent with the act of 11th February, 1847, and void.—(5: 609.)

4.—PRE-EMPTION.

1. The rights of pre-emption, given to settlers by the act of 12th April, 1814, attach to settlers on lands set apart for bounties by the act of 6th May, 1812, who settled thereon prior to the surveys, but not to those who settled thereon subsequently.—(1: 290.)

2. The pre-emption claims cannot be ascertained and decided upon by any other agency than that of registers and receivers of the land districts in which they are situate.—(*Ibid.*)

3. The language of the act 26th May, 1824, granting pre-emptions in the Lawrence district, is in the present tense. Therefore, lands ceded to the United States by the Quapaw treaty, of January 18, 1825, although within the Lawrence district, are not subject to pre-emption. (2: 42.)

4. Pre-emptions under contract with John C. Symms could not be entered on lands lying between Roberts' and Ludlow's lines. Congress could not have intended that Symms' contract should interfere with the Virginia military reservation.—(2: 246.)

5. Where a part of section sixteen is disposed of the State is not bound to select the residue, but may take an equivalent on other sections, (under Cherokee treaties, July, 1817, and February, 1819.) The act of selection of a section in lieu of section sixteen is that by which the tract becomes appropriated for school purposes.—(2: 360.)

6. A valid pre-emption, under act of 1829, however, cannot be avoided by the sele (*Ibid.*)

7. Where first settlers have rented their improvements to others, landlords, not tenants, are entitled to pre-emptions. The object of

the law was to secure improvements to those making the expenditures. (2: 367.)

8. It would be unsafe for the land officers to permit entries and to receive purchase moneys from persons not claiming pre-emption rights, without first ascertaining whether there is a settler on the land entitled to pre-emption; but such right is inchoate, and can only become complete by making the proof and payment required by the act during its continuance, and, consequently, will not prevent the emanation of a patent after the act has expired if these requisites have not been complied with.—(*Ibid.*)

9. Where a settler has obtained a right of pre-emption to one quarter section, and has made improvements on another tract of land which he has leased, the lessee, as such, is not entitled to the pre-emption.—(2: 383.)

10. No pre-emption claim set up by any person will justify the cutting of timber from such lands, until title to the land claimed is acknowledged by the government, or maintained by the judgment of the court.—(2: 524.)

11. The revival of the pre-emption act of May 19, 1830, by the act of the 19th June, 1834, embraces the provisions engrafted thereon by the supplementary act of January 23, 1832.—(2: 701.)

12. Pre-emption accrues to aliens under the acts of 1830 and 1834, especially where the local law authorizes them to hold and convey real estate.—(3: 90.)

13. The assignee of a pre-emption certificate takes it subject to the equities subsisting between the settler and the United States.—(3: 91.)

14. The legal title is in the United States, until a patent issues; and where the equities are equal, the legal title will prevail.—(*Ibid.*)

15. In cases of doubt, patents may be suspended until the question shall have been determined by a competent tribunal.—(3: 102.)

16. There is reason to doubt whether a pre-emption to an accumulation of land in the Mississippi can be allowed to exist.—(*Ibid.*)

17. The lands ceded by the Quapaw treaty of August, 1818, are not subject to pre-emption under the act of April 12, 1814. The Indian title not having been extinguished, they could not have been settled prior to the date of that law, consistently with the claim of the Quapaws.—(3: 106.)

18. Legal evidence from competent sources, (excluding the oaths of claimants and all interested parties,) is what is intended by the word "proof," contained in the act of the 29th May, 1830.—(3: 126.)

19. The Commissioner of the General Land Office may prescribe the

mode and kind of proof; how and by whom it should be taken; but cannot prescribe anything as proof which is not such in fact, nor any rule as to its weight and force.—(*Ibid.*)

20. Any entry allowed by the register and receiver, upon the affidavit of the interested party, and only corroborated by facts within their knowledge, is only erroneous and voidable, not void as against the United States.—(*Ibid.*)

21. Settlers or occupants within the meaning of the law, are those who resided personally on the public land in question, or who occupy and use it. Settlements and occupancy cannot be effected by proxy.—(*Ibid.*)

22. Pre-emption floats mislaid on lands subject to another right of preference may be raised, and properly relocated at any time prior to the public sale of the lands, including the tract on which the original right accrued, but not afterwards.—(3: 133.)

23. Certain lands having been actually entered under the pre-emption laws, pursuant to instructions sent to the register and receiver from the Treasury Department, the case is clearly brought within the terms of the second section of the act of July 2, 1836, and the patent should issue accordingly.—(3: 139.)

24. By the terms “settlers” and “occupants” used in the pre-emption acts, is meant those who personally cultivate and reside on, or who personally cultivate, use, and manage the public lands.—(3: 182.)

25. Actual residence on the land is not indispensable, yet, with cultivation, it is the highest evidence of that *personal connexion* which is indispensable.—(*Ibid.*)

26. The head of a family whose dwelling is not on the land, but who improves and cultivates by the application of his personal labor, or by that of his family, hired men, servants, or slaves under his direction, is entitled to the benefits of the law.—(*Ibid.*)

27. The law of landlord and tenant is inapplicable to the subject of pre-emptions; yet, as it has been made the basis of instructions, the rule ought to be followed. The act of 2d July, 1836, confirms such entries.—(*Ibid.*)

28. A pre-emptor cannot be undermined by a subsequent fraudulent purchaser.—(*Ibid.*)

29. The act of July 14, 1832, is an amendment of the act of 1830, which is revived by the act of June 19, 1834, and is to be considered a part thereof.—(3: 195.)

30. A failure to pay for a pre-emption before a public sale of the lands in which it is situated forfeits the right, and consequently the

right to select eighty acres elsewhere ; it may be saved, however, by a tender of payment in due time.—(3 : 211.)

31. A tender for the original tract and for the tracts selected, with a condition that the first shall not be received without the latter, is a good tender, provided all the tracts are liable to be selected ; otherwise, not.—(*Ibid.*)

32. A pre-emptor may float a tract returned as a regular half-quarter section, and two pre-emptors may float tracts that do not in the aggregate exceed 160 acres. He may select subdivisions of fractions where the land district contains no regular half-quarters, but in such cases should be confined to those containing the least excess over eighty acres.—(*Ibid.*)

33. Where the district contains regular half-quarters, the two floats cannot take fractions which, united, amount to over 160 acres.—(*Ibid.*)

34. Designating a tract before the coming in of a plat, so as to enable the proper officer to locate, is sufficient. Error in description is not fatal if the tract be identified.—(*Ibid.*)

35. A person who inhabited one-quarter section and cultivated another, of which he was in possession on the 19th June, 1834, is entitled to enter the same after six months from the date of the act.—(3 : 258.)

36. The option of entering either is lost only by neglecting to make the application within six months.—(*Ibid.*) .

37. An officer of the army of the United States in actual service may have a valid pre-emption claim as settler or occupant of public lands, although it may seem to be incompatible with the condition of an officer in actual service.—(3 : 303.)

38. As to the personal residence and inhabitancy on public lands necessary to confer the right of pre-emption, former opinions on the subject are referred to, indicating that where there is but a partial cultivation under the immediate personal direction of the claimant as the head of a family by himself, hired men, servants, or slaves, and a settlement and occupation actually intended to be made, and is subsequently made, by the claimant, he is entitled to the benefit of the laws.—(3 : 309.)

39. Where the improvement is on a fractional section containing over 160 acres, the claimant may enter, in conformity with the legal subdivisions recognized by the acts of 1830 and 1834, a quantity of land not exceeding 160 acres.—(3 : 313.)

40. A 40-acre lot created by the operation of the act of April 5, 1832, is not such a legal subdivision, and cannot be taken in addition

to the fractional quarter containing the pre-emptor's improvement.—(*Ibid.*)

41. The third article of the circular of the Commissioner of the General Land Office, dated July 22, 1834, and the third and eighth article of the circular of October 21, 1834, are not inconsistent with the law.—(*Ibid.*)

42. Back pre-emptions cannot be lawfully claimed by those who were not owners of land on a river, creek, &c., at the time of the approval of the act of June 15, 1832, (to authorize the inhabitants of Louisiana to enter the back lands;) and individuals entitled to lands, but who had not located them at the date of said act, cannot be considered to have perfected a title to any specific lands so as to be regarded as owners within the meaning of the act.—(3 : 452.)

43. The land in controversy was not subject to pre-emption, for the reason that the claimant did not own the front lands in 1832.—(*Ibid.*)

44. The right of pre-emption attaches only to such public lands as are subject to the operation of the general land system of the country, and not to those which have by the act of Congress been taken out of the class of public lands and appropriated to specific objects, or reserved for particular purposes, as for the cultivation of the vine and olive.—(3 : 456.)

45. The dwelling house of a pre-emptor being on a fractional section, and his improvements extending over upon another fractional section and upon an entire one, his right of pre-emption cannot be admitted to the three, but is limited to his domicile and one of the other two sections of land.—(3 : 563.)

46. The permissive possession of twenty-seven years may give the party strong equities, which may be addressed to the legislature; yet the land officers can only be governed by existing acts of Congress.—(*Ibid.*)

47. The right of pre-emption, if otherwise mature, may be allowed to lands reserved from sale, under the supposition that they fell within the limits of the grant in aid of the Milwaukie and Rock River canal, but subsequently found not to be included.—(3 : 577.)

48. Where an assignee in blank of the floating right of pre-emption to a specific quantity of land is in conflict with an assignee of the same right, which has been actually located, and the Commissioner of the General Land Office is satisfied that the assignment in blank is not clearly fraudulent, he ought to issue the patent to the original pre-emptor, leaving the conflicting claims to be settled by courts of justice.—(3 : 608.)

49. The disallowance of a pre-emption claim made by an assignee of a certificate of purchase by the register and receiver, who had competent authority to judge of its validity, on grounds satisfactory to them that it was unfounded, is conclusive against the claim.—(3: 664.)

50. The acquittal of McDonald and Norton for perjury, charged to have been committed in swearing to the affidavit upon which the claim of pre-emption was grounded, is not conclusive upon the United States in the land department.—(*Ibid.*)

51. Certain pre-emptioners in the Cherokee country are entitled to a year to make proof and complete entries.—(4: 20.)

52. The acts of 1838 and 1840 revived the law of 1830; and the principle laid down in the opinion of the Attorney General, dated April 8, 1837, is applicable to the claimants in the present case.—(*Ibid.*)

53. Pre-emptioners, under the act of 1834, have not the right to a survey and patent of land surveyed for town lots and streets, under the acts of 1836 and 1837, in the Territory of Iowa.—(4: 23.)

54. The pre-emption grants give to the pre-emptor a *jus ad rem*, but not a *jus in re*; and such a right, resting in contract, cannot always be carried out by specific performance.—(*Ibid.*)

55. The Secretary of the Treasury has no power to order surveys of these town lots and streets into farm lots to suit the wishes of pre-emptioners, in order to perform specifically one act of Congress which is in conflict with later acts requiring a different survey.—(*Ibid.*)

56. The claims of pre-emption in question cannot be allowed under the acts of Congress, for lands acquired by the treaty with the Miamies of November 6, 1838.—(4: 89.)

57. The sales made to pre-emptioners within the admitted or ascertained limits of the Houma grant are entirely void under the sixth section of the act of 1811.—(4: 92.)

58. In the cases of patents issued there is no remedy except in the courts.—(*Ibid.*)

59. Free colored persons are entitled to the benefits of the pre-emption act of 1841. The plain meaning of the act is to give the right of pre-emption to all denizens. Aliens only, in the proper acceptation of the term, are excluded from the right. Free colored people are distinguished from aliens, even where slavery exists, and are capable of all the rights of contract and property.—(4: 147.)

60. The residence required by act of June 1, 1840, is limited to the date of that act, and need not have continued for four months next preceding it, as required by the act of 1838.—(4: 198.)

61. Pre-emptioners under the act for the armed occupation and settlement of the unsettled part of the peninsula of east Florida, approved August 4, 1842, have no right to cut live-oak or other timber for any purpose other than to clear, improve and fence their land, until after the five years' occupation shall have enabled them to acquire a perfect title.—(4: 405.)

62. All lands within the prescribed limits as to boundary and quantity were open for such settlement, with the single reservation contained in the third section, which prohibits any such settlement within two miles of any permanent military post of the United States, established and garrisoned at the time such settlement and residence was commenced.—(*Ibid.*)

63. The Wyandot lands were not subject to pre-emption or private entry. They were required to be offered at sale at not less than two dollars and fifty cents per acre.—(4: 442.)

64. Settlers upon the public land must comply with the conditions of the land laws in order to avail themselves of the privilege of pre-emption.—(4: 493.)

65. They must give the written notice of their settlement and intention to claim the right of pre-emption within thirty days from the date of their entering personally on the land with the intention of settling there.—(*Ibid.*)

66. They must also inhabit, improve, build, pay, and make proof, within twelve months, to be entitled to preference over those who may have entered the same lands at the land office.—(*Ibid.*)

67. Where a settler upon certain public lands on the east bank of the Mississippi river—which, when subsequently surveyed, was designated as the southwest fractional quarter of section twenty-five—failed to make payment therefor prior to the day appointed for the public sale of lands in that vicinity, and by his agent, on that day, refused to enter and pay for the same unless he could be permitted also to enter the southeast fractional quarter section; and not being gratified in that respect, (the land officers refusing his request, and offering all the lands at public sale, and actually selling the southeast fractional quarter, and afterwards obtaining a confirmation of their proceedings,) by his agent having applied to the Secretary of the Treasury for a hearing in respect to his claim of pre-emption: *Held*, that he abandoned his claim by refusing to make payment unless he could be permitted to enter the southeast fractional quarter section, and that by such refusal he forfeited all right which he had previously acquired to the premises.—(4: 637.)

68. The pre-emption act of 19th June, 1834, expressly declares that its provisions shall not be available to those who fail to make the proof and payment required before the day appointed for the commencement of the public sale.—(*Ibid.*)

69. The claim presented having no merit in law or equity, the decision of the Commissioner of the General Land Office, approving the proceedings of the register and receiver, should be affirmed.—(*Ibid.*)

70. A party, *prima facie* entitled to pre-emption, should not be precluded from receiving a patent for the land by the mere allegation of his being an alien.—(5 : 551.)

71. By treaty between the United States and several tribes of Indians in the Territory of Kansas, the latter ceded certain lands to the United States on condition that a part of the same should be held in trust by the United States to be sold at public auction for the benefit of such Indians.

Afterwards, by act of Congress, all the lands in the Territory, to which the Indian title had been extinguished, were made subject to the laws of pre-emption.

Held, that the provision does not include the lands thus reserved by the treaties for public sale for the benefit of the Indians.—(6 : 658.)

72. The Hot Springs in the State of Arkansas are the property of the United States, having been reserved from entry or sale by express act of Congress.—(6 : 697.)

73. None of the parties asserting title thereto either by pre-emption, location, or otherwise, present any satisfactory proof of such title as against the United States.—(*Ibid.*)

74. Under the land laws of the United States, aliens are entitled to purchase the public lands, subject only, as to their tenure, to such limitations as particular States may enact; with this exception, however, that pre-emptions are secured to aliens who have declared their intention to become naturalized according to law, and to citizens whether native-born or naturalized, and none others.—(7 : 351.)

75. The same distinction is maintained in the graduation acts, with the further condition that the limited quantity of land, purchasable by any person at the reduced prices, can be purchased only for personal use and for actual settlement and cultivation.—(*Ibid.*)

76. Portions of the public lands, to the amount of three hundred and twenty acres, may be taken up by individuals or pre-emptioners for city or town sites.—(7 : 733.)

77. The same rules as to proof of occupation apply in the case of municipal as of agricultural pre-emption.—(*Ibid.*)

78. Indians are not capable of pre-empting the public lands of the United States.—(7: 746.)

5.—BOUNTIES FOR MILITARY SERVICES, (AND HEREIN OF BOUNTY LAND WARRANTS AND THEIR LOCATION.)

1. Land warrants, by the laws of Virginia, are not mere chattels, but are regarded as a kind of inchoate title to lands, and descend to heirs.—(1: 311.)

2. A land warrant held in the right of a femme covert must be assigned by her with her husband in order to transfer it.—(*Ibid.*)

3. Military bounty land warrants to Canadian volunteers, under the act of March 5, 1816, are not assignable. Such warrants, when fraudulently obtained, may be cancelled so as to prevent their use for any mischievous purpose.—(1: 326.)

4. Canadian volunteers may locate lands for which warrants have been issued to them, by attorney, the same as others similarly entitled have been accustomed to do.—(1: 424.)

5. Land warrants, under the act of 3d March, 1801, must be received at the rate of two dollars per acre in payment for any lands west of the Mississippi. The act of 24th April, 1820, does not affect their value.—(1: 536.)

6. As the owner of a land warrant may locate it in as many several parcels as he pleases, he may demand and take a grant for each.—(2: 26.)

7. The provisions of section 1 of the act of 20th May, 1826, are not limited to warrants obtained after the passage of the act.—(2: 280.)

8. The terms “any such warrants” relate to warrants issued previous, as well as subsequent to the act.—(*Ibid.*)

9. Congress intended to subject these claims, in their progress from entry to patent, to the supervision of the Secretary of War.—(*Ibid.*)

10. Land scrip issued upon the surrender of warrants issued for bounty lands granted by the United States, and by the State of Virginia, for services in the revolution, should issue to the parties *nomi- natim*, and to heirs on due proof of heirship.—(2: 385.)

11. When issued according to the terms of the warrant, in certain cases, they must be assigned by all the heirs by name, and accompanied with proof of identity, heirship, and proof of assignment.—(*Ibid.*)

12. It must issue to the heirs or assignees, and not to executors nor administrators ; for it is to be considered as belonging to the realty.—(*Ibid.*)

13. Virginia land scrip is so far the representative of money as to be subject to the same equitable deductions, in case of indebtedness to, or frauds committed upon, the government, as may be made in the case of a sum of money from the government to one of its debtors.—(3: 35.)

14. Land scrip issued pursuant to the act of 30th of May, 1830, for the relief of certain officers and soldiers of the Virginia line and navy, must be made out in the names of the persons *prima facie* entitled to it.—(3: 97.)

15. If there be equitable assignees of the whole or any part of the scrip which may be issued, and they shall claim the same in hostility to the parties originally entitled, the scrip, if delivered at all, ought to be delivered to the parties originally entitled, their heirs, devisees, or other agent or agents, as contradistinguished from persons claiming interests, as assignees or otherwise, by contract.—(*Ibid.*)

16. But where the department sees that the just claims of other persons will be liable to be defeated by such delivery of the scrip, it may lawfully suspend the actual delivery until claimants can have time to apply to a court of equity for an injunction ; and if it be procured, to retain the scrip until the rights of the parties can be judicially determined.—(*Ibid.*)

17. The Treasury Department may suspend the issuing of all or any portion of the scrip claimed on a warrant issued for a greater number of acres than may appear to be due, until the true amount can be ascertained.—(3: 103.)

18. Scrip for revolutionary land warrants may be issued ; and for that purpose the first section of the act of May 30, 1830, is now in force.—(3: 246.)

19. Land scrip issued in satisfaction of military bounty land warrants must be regarded as real estate, and to go upon the death of the holder to the heirs-at-law, and not to the executors and administrators.—(3: 382.)

20. Scrip may be issued on a Virginia land warrant dated subsequent to September 1, 1835, in cases where it shall appear that such warrant is not an original one, but was only issued in place of one issued improvidently to wrong heirs prior to September 1, 1835, and cancelled by Virginia, as it is in the nature of an exchange warrant,

and may be treated as if issued within the time provided by law.—(3: 499.)

21. The heirs of Captain Kirkwood, who entered the revolutionary service, in the Delaware regiment, in the year 1776, and continued in service until the end of the war, are entitled to scrip on a warrant issued for three hundred acres of land on account of his services, whether they were properly entitled to scrip on a warrant for four thousand acres, issued by the executive of Virginia, or not.—(3: 556.)

22. It appears that by a construction given to certain acts and resolutions of Congress, and of Virginia, such of the troops from other States as were, in the course of the war, attached to the Virginia State establishment, and continued in service to the end thereof, were entitled to the same bounty from Virginia as if they were originally raised in that State.—(*Ibid.*)

23. In case the Secretary of the Treasury shall have any good reason to believe that such warrants have been issued in error or mistake, he may suspend the issue of scrip; or, if issued, cause measures to be taken to have it cancelled.—(*Ibid.*)

24. By the treaty of Dancing Rabbit Creek, if any portion of a section on which a claimant under the 14th article of said treaty resided at the date thereof, had been sold by the United States prior to the passage of the law of 1842, the commissioners were not authorized to award to said claimant scrip instead of land, unless it was then impossible to give to said claimant the quantity of land to which he was entitled, including his improvements, or any part thereof, on the adjoining lands.—(4: 344.)

25. The act of 11th February, 1847, granting bounty lands to non-commissioned officers and soldiers serving in the war with Mexico, does not authorize locations of land warrants upon lands, the price of which is fixed at two dollars per acre by the act of 3d March, 1846.—(4: 714.)

26. The provision allowing bounty lands to the soldiers was intended to operate on the public lands which are subject to sale at the minimum price.—(*Ibid.*)

27. Where a land warrant issued to the administrator *de bonis non* of a deceased colonel of the Virginia line for services rendered by him in the revolutionary war, and the said administrator proposed to surrender it, and to receive scrip in lieu thereof, for the benefit of the devisees named in the decedent's will, pursuant to the act of Congress for the relief of certain officers and soldiers of the Virginia line and

navy, and of the continental army: *Held*, that as the warrant issued to the administrator with the will annexed, for the benefit of the devisees, scrip in exchange may issue in the same manner and for the same purpose.—(5: 308.)

28. The Commissioner of Pensions cannot lawfully issue more than one warrant on a soldier's claim for bounty land.—(5: 387.)

29. If, through mistake or fraud, he shall issue more than one warrant upon the same claim, he will have transcended his authority, and performed an act having no legal validity.—(*Ibid.*)

30. Where a volunteer was regularly mustered into service according to the act of 16th May, 1846, but honorably discharged before marching to the seat of war, or performing any warlike duty: *Held*, that he is entitled to bounty land under the act of February 11, 1847.—(5: 617.)

31. If the government issue a land warrant for a claim on which it had granted a former one, the circumstance does not deprive the first warrantee of his rights.—(5: 702.)

32. The bounty lands mentioned in the act of January 11, 1812, may be commuted under the act of April 16, 1816, notwithstanding the death of the soldier.—(5: 702.)

33. The United States have assumed all unsatisfied outstanding military land warrants of the State of Virginia, issued by the proper authorities thereof, for revolutionary services of its officers, soldiers, seamen, and marines, such warrants having been fairly and justly issued in pursuance of the laws of the State.—(6: 243.)

34. Persons called in the laws of Virginia "supernumerary officers," and in the resolves of Congress "deranged officers," are to be treated as in service, and warrants issued to them by the State for additional land on account of such services are entitled to be exchanged for land scrip of the United States.—(*Ibid.*)

35. By the laws of the State of Virginia, the legal representatives, the heirs or devisees of any one of her officers or privates who fell or died in service during the revolutionary war, are entitled to the same quantity of bounty-land as would have been due to him had he continued to live and to serve to the end of the war, and warrants therefor lawfully issued are to be satisfied by scrip of the United States.—(6: 258.)

36. An unliquidated claim to bounty-land scrip in Virginia passes by a clause of general residuary devise.—(6: 716.)

37. An administrator of the estate with such will annexed, who, as such, received the bounty-land warrant under the authorities of the

State of Virginia, is entitled to receive the scrip in exchange from the United States.—(*Ibid.*)

38. Land scrip of the United States, issued in exchange for bounty land scrip of the State of Virginia, has in some respects the qualities of real, and in some of personal estate; but the determination of who is entitled is independent of that question, being specially defined by acts of Virginia or of the United States.—(7: 32.)

39. The act of March 3, 1855, section 1, embraces not only militia or volunteers whose military services were performed under the general command of the United States and in time of war, but also such as rendered military service, whether in war or not, and whether under the immediate authority of the United States or of a State or Territory, but who shall have been paid for such service by the United States.—(7: 606.)

40. The decisions of the courts of Virginia in regard to conflicting claims to bounty land warrants under the laws of that State are to be considered as determining their relative rights, and to be respected by the United States.—(7: 652.)

41. But where it has not been satisfactorily determined by the courts of Virginia which of two persons “presenting” themselves is the true party entitled, the Secretary of the Interior may well refuse to issue scrip to either.—(*Ibid.*)

42. A land warrant fraudulently obtained from the Commissioner of Pensions in the name of a person deceased without heirs or widow, or of a fictitious person, is a mere nullity, incapable of lawful assignment, and may be rejected or cancelled by the Commissioner of Public Lands.—(7: 657.)

43. But, when the Commissioner has duly issued a military land warrant, valid on its face, to a person *in esse*, and capable of assigning, and such warrant has passed by lawful assignment to a *bona fide* purchaser for value without notice, the government cannot cancel such warrant on the ground that the Commissioner issued it in misapprehension or on imperfect or false evidence.—(*Ibid.*)

44. Unlocated land scrip of the State of Virginia belonging to the estate of the Baron Steuben, being personal estate, is subject to the testamentary provisions of Baron Steuben’s will, proved in the State of New York, and therefore demandable, on the failure of testamentary trustees, by a trustee duly appointed by the courts of New York.—(7: 688.)

V.—LAND OFFICES.

1.—GENERALLY.

2.—GENERAL LAND OFFICE.

3.—REGISTERS AND RECEIVERS.

1.—GENERALLY.

1. The 25th section of the act of 26th of August, 1842, having been construed to repeal the enactments which conferred the power, the Secretary of the Interior is without authority to appoint agents to examine into the condition of the local land offices.—(5 : 377.)

2. The expenses incurred in the examination of the books, accounts, &c., of the receivers of public money, arising from the sale of the public lands by designated agents of the Treasury Department, under the sub-treasury law, are chargeable to the appropriations for special agents to examine books, accounts, and money on hand, in the several depositories under that law.—(*Ibid.*)

2.—GENERAL LAND OFFICE.

1. The third section of the act of 12th April, 1814, makes it the duty of the Commissioner of the General Land Office to examine whether the certificate of the recorder of land titles in Missouri was fairly issued to an assignee according to the true meaning and intent of that act; and if found not to have been so, to withhold a patent.—(1 : 718.)

2. The act of 4th July, 1836, places the General Land Office under the supervision of the Secretary of the Treasury. If there be doubts of its effect, it is at any rate competent for the President to exercise his control by directing the Secretary of the Treasury to superintend the same, under the usual subordination to the President.—(3 : 137.)

3. The decision of the Commissioner of the General Land Office respecting the location of certain Spanish concessions to Esther, Brazeau, Labaume, and Choteau, respectively, are correct, and patents should be issued in conformity therewith. The appeals from the decisions of the Commissioner were not well taken.—(5 : 367.)

4. The regulation, established by the Commissioner of the General Land Office, requiring holders of land warrants to make affidavit that

there is no settlement on the land intended to be located, is inconsistent with the act of 11th February, 1847, and void.—(5 : 609.)

3.—REGISTERS AND RECEIVERS.

1. The President cannot appoint registers and receivers for the land districts until there shall be sufficient land surveyed to authorize the opening of land offices.—(1 : 290.)

2. Decisions of registers and receivers upon the facts offered to establish pre-emption rights under the act of 29th May, 1830, are conclusive.—(3 : 93.)

3. They act in a judicial capacity in weighing and deciding upon the sufficiency of the evidence offered ; and although they are to observe the rules prescribed by the Commissioner of the Land Office, they cannot be compelled to act upon any judgment but their own:—(*Ibid.*)

4. The issuing of patents, however, depends on the Commissioner, who may suspend them, where the decisions were obtained by fraud or founded in material errors of fact or law, until the decision of the judiciary or the direction of Congress can be obtained.—(*Ibid.*)

5. Under the act of the 19th February, 1833, registers of land districts are made judges of the validity of purchases made under the first section thereof, and the Treasury Department has no power to revise or reverse their decisions.—(3 : 104.)

6. Where H. and F. applied at a land office to enter certain lands, but not being able to comply with the regulations of the department, procured them to be marked and reserved from sale to T., who, soon thereafter, applied to purchase and pay for them, and was refused ; and afterwards H. and F. made payment and obtained a certificate of purchase : *Held*, that the land officers should have complied with T.'s offer ; and that as a patent has not yet issued, the matter is yet under control of the General Land Office.—(3 : 240.)

7. Except as is specially provided, registers of the land offices cannot lawfully be concerned in the purchase of public lands. They are agents of the government to sell ; and upon principle, as well as by the express terms of the act creating their offices, they are precluded from entering on their books any application for lands in their own names, or in the name of any other person in trust for them.—(4 : 223.)

8. If registers wish to purchase land, they are required to make application to the surveyors general, who are authorized to make the proper entries and returns in such cases.—(*Ibid.*)

9. But receivers being a different class of officers, and standing in relations to the government different from those sustained by registers, may purchase the public lands the same as other citizens.—(*Ibid.*)

10. The executive department may enforce by regulations the prohibitions of the law as to purchases by registers; but it is incompetent to make regulations to restrain receivers of public moneys from purchasing the public lands like other citizens.—(*Ibid.*)

11. Registers by express terms of statute, and receivers by legal construction, may purchase public lands at private entry.—(7: 647.)

12. But neither registers nor receivers can purchase such lands by pre-emption within their respective districts.—(*Ibid.*)

VI.—PATENTS.

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1. GENERALLY.
 2. ISSUE OF PATENTS.
 3. VALIDITY OF.
 4. LOCATION.
 5. CERTIFICATES.
 6. CONFIRMATION OF TITLE.
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1.—GENERALLY.

1. The holder of an unpatented location cannot dispossess one holding under a patent from the United States by any common law proceeding, but he may institute a proceeding in chancery for the purpose of rescinding a patent improperly granted.—(1: 300.)

2. The general standard of remuneration, where title fails, is the purchase money and interest; the improvements to be paid for by the successful party.—(*Ibid.*)

3. By the act of March 1, 1800, the Secretary of the Treasury was required to number the 100 acre lots of the fifty quarter townships progressively, and that the patent issued for each should *inter alia* give the number of the lot located. Such description cannot be departed from, for no form of description varying therefrom will pass the title of the United States; nor can any patent be issued until the lots shall have been numbered. “The system which has been adopted for the arrangement and appropriation of these lands is beautiful and perfect as it stands; no ministerial officer should be permitted to touch or alter it in any of its parts.”—(1: 323.)

4. Land patents issued by mistake for lands to which other persons have pre-emption rights may be returned and cancelled, or repealed

by *scire facias* or bill in chancery, at the instance of the United States, or of the pre-emptioners in the name of the United States.—(1 : 458.)

5. Where application is to be made to the Supreme Court for redress, in a land patent case, in the mean time it may be as well to suspend the patent.—(2 : 187.)

6. Purchasers of lands reserved by the 2d and 3d articles of the Creek treaty of March 24, 1832, must have patents to complete their title.—(3 : 40.)

7. The recorder of the General Land Office only has power to attest and seal patents for public lands, the former law in this respect having been repealed by the act of July 4, 1836.—(3 : 140.)

8. All patents emanating from the General Land Office, whether of land sold, or of lands in respect to which private claims are recognized by acts of Congress, must be certified or countersigned by the recorder.—(3 : 167.)

9. Sales by the Creeks where purchasers, either by force or fraud, abstract from them the purchase-money, are fraudulent and void.—(3 : 259.)

10. So, also, are sales approved by the President where the reservee was personated by other Indians; and patents may be withheld.—(*Ibid.*)

11. A New Madrid location of lands upon a tract confirmed to the heirs of James Mackay must yield to the title of the confirmees, as the "sale or other disposition" referred to in the 11th section of the act of May 26, 1824, is to be understood to mean a sale or disposal in conformity to law.—(3 : 354.)

12. Ordinary sales of lands afterwards confirmed to a Spanish claimant, must yield to the confirmed claim.—(*Ibid.*)

13. The claim of the heirs of Mackay, founded on a special grant made in the year 1799, containing an exact description of the land, and accompanied with uninterrupted possession ever after, having been submitted to the district court of Missouri, and by appeal to the Supreme Court of the United States, and adjudged to be a valid and lawful grant, a patent should issue to the heirs for it, notwithstanding New Madrid sufferers may have located upon it.—(3 : 505.)

14. But to protect any adverse rights that may exist, the patent should contain a clause reserving the rights, now or heretofore existing, of all just and legal adverse claimants to the whole or any portion of the land patented.—(*Ibid.*)

15. It is a sufficient compliance with the provisions of the act of July 4, 1836, for the engrossing clerks to write the name of the President to patents, and for the Secretary thereafter to attest them by his signature.—(3 : 623.)

16. All the duties respecting the execution of patents, except the attestation, are ministerial, and may be performed either by the clerks or by the Secretary.—(*Ibid.*)

17. The counter signature of the recorder of land patents, and seal of the office thereto attached, constitute a sufficient authentication of a patent for land.—(3 : 630.)

18. Patents for reserve lands under the treaty of 1832 are to be issued to purchasers, owners, assignees, or transferees ; and claimants must show themselves to be within the description of persons entitled, by exhibiting authentic evidence of the fact.—(3 : 644.)

19. The reservations under the Choctaw treaty, of "sections," refer to quantity ; but that is to be taken and patented in reference to the established system of our land surveys, in parallelograms of fixed extent and uniform character.—(4 : 45.)

20. On a certificate to A. and company, assigned by A. alone, a patent may issue to A.'s assignees ; and his partners must seek relief, if they shall be entitled to any, in the courts.—(4 : 96.)

21. It is not competent or proper for the Commissioner of the General Land Office to make alterations in the dates of patents for lands, after the delivery thereof to the grantees.—(4 : 329.)

22. Whether patents irregularly issued shall have effect from their date or time of delivery may be determined by parole testimony.—(*Ibid.*)

23. Where an Indian reservee under the 2d article of the treaty of 24th March, 1832, contracted to sell his reservation to A, who paid therefor \$100, and then permitted B. to go into possession thereof ; and A. afterwards died, and B, offering to pay the balance of the valuation of the land, claims a patent: *Held*, that B may be regarded as the last *bona fide* transferee within the act of 1848, and that a patent be issued to him on payment by him of the balance of the purchase money.—(4 : 491.)

24. Where, upon the application of a settler on public land in Iowa for a patent for his entered location, it was made to appear, that after having executed a deed of a portion of the land to another person, he made the affidavit required by law, that no person other than himself had any interest therein, and that he had made no contract, &c. ; and that such grantee had obtained a patent for his land under the

act of 4th September, 1841, and claimed to hold it, notwithstanding the settler's deed to him had been decreed by a court of chancery, having jurisdiction, to have been obtained by duress, and for such reason to be void: *Held*, that a second patent for the same land ought not to be issued whilst the first remains outstanding.—4: 558.

25. It is not the duty of the government to institute proceedings to vacate the first patent, as it is in nowise responsible for the act which embarrassed the settler's pre-emption and caused the existing difficulty.—(*Ibid.*)

26. The applicant should seek relief in the court of chancery, which has full jurisdiction of the case, and ample power to administer the remedy to which he shall be entitled.—(*Ibid.*)

27. He may, however, be permitted to use the name of the United States in his proceedings, if the Secretary of the Treasury shall deem it discreet to authorize it.—(*Ibid.*)

28. Patents, granted by the United States for lands confirmed by the commissioners to adjudicate private land claims, do not confer title save as against the United States.—(7: 636.)

29. The legal effect of confirmation dates back to the time of the cession of California to the United States, and decides that the land confirmed was not public domain at that time.—(*Ibid.*)

30. The rights or claims of third parties remain to be determined by the proper courts.—(*Ibid.*)

31. Such patents do not carry, nor do they reserve, any right as to mines, all which remains to be determined by the laws of California.—(*Ibid.*)

32. Mines of the precious metals belong to the eminent domain of the political sovereignty, as well by the laws of Spain as by the common law of England and the public law of the United States.—(*Ibid.*)

2.—ISSUE OF PATENTS.

1. Persons having land allotted to them under act of 29th August, 1787, are not entitled to patents till provision is made for issuing them.—(1: 45.)

2. Patents, under act of June 9, 1794, for lands in Virginia, cannot be issued until the claimant shall have first complied with the laws of Virginia to which the act refers.—(1: 79.)

3. Where local law will authorize it, a patent may issue to the purchaser of land at a sheriff's sale.—(1: 191.)

4. Patents, under the act of 17th February, 1815, must issue to the owner at the date of the act, if alive, and if dead to the heirs or

devisees. The act attaches no assignable quality to the charity which it bestows, and being the only authority for issuing a patent, its terms must be strictly pursued.—(1: 361.)

5. Land patents may, and ought to, be withheld where the confirmations have been obtained by fraud. If actually issued, the courts will cancel them.—(1: 699.)

6. The issuing of a patent is not so purely a ministerial act as to follow a patent certificate as a matter of course.—(2: 15.)

7. The re-location and survey having been made in the name of the original patentee, after the alleged transfer of his right to others, the patent must be issued granting lands to him, his heirs, &c., according to the suggestion in the fifth section of the act of the 10th of August, 1790.—(2: 25.)

8. A patent issued by mistake may be corrected before delivery. If delivered, and the patentee refuse to surrender it for cancellation, the President may issue a new one, reciting the error committed in the former as the cause.—(2: 41.)

9. Where a patent was issued by mistake for a whole instead of a quarter section of land, and the patentee sold the same: *held* that the vendee be immediately notified of the mistake, and that both be made parties to a suit for the cancelling of the patent.—(2: 53.)

10. Patents should not issue for lands inadvertently sold.—(2: 186.)

11. The Commissioner is bound to issue the patent to the original beneficiary, his heirs or assigns, and must, therefore, have satisfactory evidence of assignment before he issues to assigns.—(2: 276.)

12. Patents must issue under the 14th and 19th articles of the Choctaw treaty of 1830, and the Chickasaw treaty of 1834, in order to divest the United States of title in the reservations.—(3: 49.)

13. Patents for reserves, under former treaties, may issue to Indian residents or assignees—under the latter only to the reservees.—(*Ibid.*)

14. Patents are requisite to divest the title of the United States to the Ottawa, Chippewa, and Pottowatomie reserves, and should be so issued as to disclose the estate granted.—(3: 55.)

15. The register and receiver, under the power given them in section twelve of the act 3d March, 1819, may examine the claim of De Feriot, and the evidence on which it was founded, for the purpose of ascertaining whether it was founded on a real or fabricated grant; and, also, for the purpose of ascertaining whether or not the confirmation was fraudulently obtained; and, if satisfied that fraud has been practiced, they ought not to make the survey nor issue the certificate.—(3: 343.)

16. The President may withhold a patent in such case, even though a certificate shall have been issued.—(*Ibid.*)

17. In case of an equitable claim in favor of an innocent purchaser, the land should be reserved from sale in order to give him an opportunity to apply to Congress.—(*Ibid.*)

18. The United States are bound by their treaty stipulations with France, and by the universal usage among civilized nations, to go on and perfect the title of the heirs of Thomas F. Reddick to a tract of land on the bank of the Mississippi, held under a Spanish grant, and relinquished by act of Congress of 1st July, 1836, unless the same shall be taken by an older and better claim not emanating from the United States; and no such title having been set up, a patent ought to issue to the said heirs.—(3: 398.)

19. On completion of payment for Creek reserves conveyed by the reservees to other persons, certified by some person appointed by the President for that purpose, and approved by the President himself, patents must issue to the purchasers.—(3: 413.)

20. It will not be a compliance with the treaty of 24th March, 1832, to issue patents in such cases, where the right is controverted, to the original reservees to abide the result of suits and to inure to the successful parties.—(*Ibid.*)

21. The claim of P. to a patent for 17,084 arpens of land in Mississippi, on pretence that his title is founded on a legal British grant made previous to 1783, and recognized and confirmed by the Spanish government in 1810, cannot be recognized at the General Land Office.—(3: 569.)

22. His claim having been reported and confirmed as one founded on a private conveyance for 1,280 acres only, as a donation, a patent for that quantity only can issue, unless further legislation shall authorize it.—(*Ibid.*)

23. The right of H., who derived title from McD., to a tract of land on Bayou Sara, in Alabama, was confirmed by the act of 2d March, 1829, to the extent of 1,280 acres.—(3: 618.)

24. The provisions of the act entitling a conferee to a patent are positive; and it ought to be issued for the tract as located, unless it shall be made satisfactorily to appear that the bayou, which is the chief land-mark, does not exist at the place described.—(*Ibid.*)

25. The execution of a patent for land to a soldier in the war of 1812, by the Commissioner of the General Land Office, passes the title, although the same had not been delivered to the patentee.—(3: 653.)

26. It is a matter of discretion with the department as to whom the patent should be delivered.—(*Ibid.*) .

27. A patent cannot issue to one of two purchasers of a quarter section of land, or for any unspecified portion of the same. Where such conditions exist as will permit a partition of the land held in common, a patent may be issued to the purchaser entitled after the division.—(4: 319.)

28. A patent may properly issue to pre-emptors, notwithstanding others to ordinary purchasers may have been issued for the same land, and remain outstanding.—(5: 7.)

29. Pre-emptors for back lands in Louisiana, under the act of 3d March, 1811, continued by that of 11th May, 1820, which reserved such lands from sale for three years—who made the entry gave the notice and paid for the same as therein provided, are entitled to patents, although others may have obtained patents for the same land pursuant to private entry.—(*Ibid.*)

30. As against pre-emptors who have complied with the conditions of the law, the executive department has no right to convey to others; and whenever it does so the grants are void.—(*Ibid.*)

31. A patent should issue to H. M. R. pursuant to a certificate issued to him on the 24th of November, 1818, and located on land at the Hot Springs, in Arkansas; he being entitled thereto under the act of 19th March, 1843.—(5: 236—7.)

32. A patent should issue to C. for land in fractional section No. 11, township 4, range 1, in the State of Ohio.—(5: 476.)

33. Where a section of public land was included with other lands in the President's proclamation for sale, and the sale took place, but the section in question was not sold, the presumption is that such section was cried by the auctioneer; and an applicant to enter the same, at private sale, need not be required by the register to prove that it was actually cried in the hearing of the bidders.—(*Ibid.*)

34. An application for the purchase of land was rejected by the register, and the applicant then tendered the purchase money to the Treasurer of the United States, who refused to receive it: *Held*, that the neglect of the applicant to appeal to the General Land Office, was not an abandonment of his application.—*Lythe vs. Arkansas*, 9 How., 328.—(*Ibid.*)

35. The question, whether there has been a dedication of a section of land to the city of Cincinnati, is not for the executive department to decide. That, and all other questions of conflicting claims and

boundaries, will be open to the proper courts of justice after the patent shall have been issued.—(*Ibid.*)

36. It is proper to withhold patents for land in cases where the claim on which they are demanded, under final decrees of the United States courts, are identical with the title or claim now in controversy before the Supreme Court.—(5: 628.)

37. Patents may not issue on the New Madrid locations which were made on lands not authorized to be sold.—(5: 727.)

38. Evidence sufficient to raise a presumption of fraud in obtaining a Canadian volunteer land warrant having been furnished, the patent should be withheld until ordered by Congress or the judiciary.—(5: 745.)

39. No patent can be issued by the Commissioner of Public Lands to any private land claimant in the State of California until after final decree in the case.—(7: 491.)

40. Where lands are confirmed by the commissioner described as being "comprehended between" certain limits, but confirmed "to the extent and quantity of four square leagues and for no more; provided that so much be contained within the boundaries called for by the grant:" *Held*, that the patentee cannot issue for more than four square leagues of land, whatever may be the quantity within the bounds designated.—(7: 681.)

3.—VALIDITY OF PATENTS.

1. A patent issued under a mistake, in consequence of a Virginia military land warrant being located on lands which had been previously and regularly located by others, is null and void.—(1: 159.)

2. The terms employed in the patent to R. L. are not so vague as to render the patent void for uncertainty. In construing public grants, issued in great numbers by the officers of the government, and in accordance with a certain formulary deliberately adopted by those officers, the courts may resort to contemporaneous documents on file in the proper department, for the purpose of ascertaining the intent of the grantors.—(3: 111.)

3. The inhabitants of the village of St. Charles, under the laws of the 13th June, 1812, the 26th May, 1824, and the 27th January, 1831, have precedence and priority over Peter Chouteau, whose claim to land was confirmed 4th July, 1836, and the claim of the latter must be located elsewhere upon the public domain.—(3: 427.)

4. All sales and locations made of lands claimed under unconfirmed

titles derived from France or Spain, between the 26th May, 1830, and the 9th July, 1832, are void.—(*Ibid.*)

5. The proper mode of proceeding to vacate an erroneous land patent is by bill in equity; the regularity of proceeding by *scire facias* in this country is doubted.—(4: 120)

6. In England letters patent are of record on the law side of the chancery; wherefore there is a propriety there for a writ of *scire facias* to vacate a patent that does not exist in the United States.—(*Ibid.*)

7. Patents erroneously issued, or rendered invalid by an act of Congress confirming adverse titles, must be cancelled, or judicially avoided, before another can be issued for the same land, even to confirmees.—(4: 149.)

8. After one patent has issued for lands, the executive department is *functus officio* in respect to such lands until its former act is judicially set aside.—(*Ibid.*)

9. The issuing of new patents whilst others are outstanding will lead to infinite mischief and confusion, by the blending of executive and judicial functions in a manner unknown to the laws and the Constitution.—(*Ibid.*)

4.—LOCATION.

1. Under the act of 1815 the location of land by squares must be adhered to.—(1: 361.)

2. Locations made in a square previous to the sectional lines being run, &c., are inadmissible, as the sale is unauthorized until the sectional lines are run.—(1: 372.)

3. No person can locate over 160 acres under a New Madrid certificate, unless the aggregate of lands lost exceeds 160 acres; in which case he can locate not exceeding 640 acres.—(1: 534.)

4. The act of 6th January, 1829, relative to location of land claims in Arkansas, is confined to the settlers dislodged by the Cherokee treaty of May, 1828.—(2: 190.)

5. A quarter section is 160 acres; less than that the governor of Arkansas cannot select under the act granting land to the State.—(2: 578.)

6. The confirmatory act of 2d December, 1833, gave to the sons of Benito Vasquez an absolute claim to lands; but the same was a floating right and cannot be located on any of the public land of the United States until further legislation shall be had in the premises.—(3: 615.)

7. As locations of certificates must be according to sectional lines,

it follows that no proper application for a location could have been made before the Wyandot land had been surveyed.—(4 : 442.)

5.—CERTIFICATES.

1. Where the register at Kaskaskia had issued two certificates for the same land to two different persons : *Aeld* that the first had preference.—(1 : 191.)

2. When the holder of a New Madrid certificate calls for a quantity of land greater than 160 acres, and less than 640, and it becomes necessary to subdivide a quarter section, it should only be done by making the subdividing line parallel and co-extensive with the line of the contiguous quarter.—(1 : 372.)

3. Such certificates may be located on a fractional section, or part of it, but not so as to appropriate all of the local advantages to the injury of the public.—(*Ibid.*)

4. Holders of certificates may take less than 160 acres, if they can find such a tract liable to sale.—(*Ibid.*)

5. New Madrid certificates located on lands the claims to which had been previously filed with the recorder of land titles in Missouri are invalid. The acts of 3d March, 1811, and 17th February, 1818, permanently reserved such lands.—(2 : 15.)

6. A land certificate may, under the act of 1828, for the relief of Messrs. E. and M., issue to A. M., the survivor of the firm, which had purchased public lands at the sales in New York.—(2 : 203.)

7. More than five months having elapsed since the certificates were suspended, and no proof of illegal conduct having been offered, it is suggested that the certificates be issued.—(5 : 688.)

6.—CONFIRMATION OF TITLE.

1. The individual who appeared before the board of commissioners, and whose claim was favorably reported upon by them, (not the original grantee,) is to be regarded as the confirmer under the act of 4th July, 1836, and is authorized to make the location.—(3 : 350.)

2. Patents are unnecessary to complete title to an unsold portion of the confirmed claim. A grant may be as effectually made by law as by a patent issued in pursuance of law.—(*Ibid.*)

3. The report of the land officers of 20th December, 1817, and the confirmatory act of Congress of the 11th May, 1820, ought to be regarded as confirming the title of Morgan to the full extent of his

grant issued by Governor Galvez on the 24th January, 1777.—(3 : 501.)

4. The confirmees under the treaty with France, under which their claims are asserted, do not claim the *dominium* of the civil law, but the doing of what is necessary to complete title and convey property. The lands to which they lay claim form a part of the public domain ; and, although the United States acknowledge themselves bound to provide for them, the whole subject remains in contract.—(3 : 720.)

5. The acts of 1824 and 1836, which confirm the French and Spanish grants, are not required to be carried into specific performance, if it cannot be done without unsettling titles in the country in question.—(*Ibid.*)

6. Prior confirmations, school sections, ordinary sales prior to the confirmatory act of 4th July, 1836, and the New Madrid locations under the act of 17th February, 1815, are valid as against the claim confirmed by the act of 4th July, 1836.—(*Ibid.*)

7. An act of Congress confirming land titles of two or more individuals, or granting land, must be taken altogether ; and if there be not land enough to answer all the grants, and there be a conflict of claims, it must be reconciled by reference to the report of the commissioners on which the act was founded ; and if two parts of the same act cannot be reconciled, the latter provisions must prevail.—(4 : 40.)

VII.—TRESPASSES ON PUBLIC LANDS.

1. GENERALLY.

2. REMOVAL OF TRESPASSERS.

1.—GENERALLY.

1. No statute makes the cutting of timber from the public lands a specific offence.—(1 : 194.)

2. Where persons are in possession of lands under a Spanish title, which has been reported by the register of the proper land office to the Secretary of the Treasury, and are at law contesting their titles as against claimants, they are not intruders within the meaning of the act of March 3, 1807, to prevent settlements being made on lands ceded to the United States, until authorized by law.—(1 : 703.)

3. Settlers on the public lands in east Florida under the act to provide for the armed occupation and settlement of the unsettled part of the peninsula of east Florida, have not a right to cut live-oak and

other timber, except for the purpose of clearing, until they comply with all the conditions of the law.—(4: 221.)

4. The conditions precedent to that right are the obtaining a permit from the register of the land office, describing the place of the intended settlement; the residence in the territory of five years; the erection of a house fit for the habitation of man; the clearing and enclosing of at least five acres, and actual residence thereon four years next following the first year of the date of such permit; and the proving, before the proper tribunal, within one year after the survey of said lands and the opening of the proper office, that the settlement has been commenced on the quarter section located, and, within six months after the expiration of the five years' residence, the proving of such continued residence and cultivation.—(4: 221, 405.)

2.—REMOVAL OF TRESPASSERS.

1. Intruders on public lands without title subsequent to act of March 3, 1807, may be removed under the provisions of the act of that date without three months' previous notice. If the marshal fail to effect such removal the President may employ military force.—(1: 180.)

2. Intruding settlers on the public lands may be removed by military force, under act of March 3, 1807. The United States have, also, all the common law and chancery remedies of individuals, under similar circumstances, for protection and redress.—(1: 471.)

3. The President may direct the marshal to remove intruders from lands the title to which has not passed out of the United States.—(1: 475.)

4. Proceedings may be taken under the 1st section of the act of 2d of March, 1831, against any person who shall have cut and removed any ship timber from lands acquired by the United States.—(2: 524.)

5. The President may employ such military force as he may judge necessary and proper to remove persons who may intrude upon any lands ceded or secured to the United States by any treaty made with a foreign nation, or by a cession from any individual State; and hence may adopt that method in respect to the lands in question.—(2: 575.)

6. The President has power to expell intruders from lands secured to Chickasaws east of the Mississippi, by military force if necessary.—(3: 255.)

7. The President may authorize the marshal to remove all persons who have fixed their residence on the public reservations, without authority, beyond the lines of the posts of Tampa bay, for the pur-

pose of selling liquor to the troops, and the suspected purpose of supplying the Indians with ammunition.—(3: 566.)

8. The reservations mentioned in the treaty concluded with the Cherokees on the 7th of June, 1806, are not lands from which intruders may be expelled by military force under the provisions of the act of 30th of March, 1802.—(5: 699.)

9. The President of the United States has lawful authority summarily to remove intruders from lands duly held by the government for the site of a light-house or for any other competent purpose.—(7: 534.)

VIII.—IMPROVEMENTS ON LANDS.

1. The governor of Indiana Territory cannot confirm unauthorized grants, unless actual improvements were made under them previous to 3d March, 1791; nor can he discriminate between the persons still holding their original grants and those who have had such grants confirmed by former governors, or have purchased under such confirmations, and have made improvements, unless such improvements were made previous to the 3d March.—(1: 95.)

2. Where the improvement is on a fractional section containing over 160 acres, the claimant may enter, in conformity with the legal sub-divisions recognized by the acts of 1830 and 1834, a quantity of land not exceeding 160 acres.—(3: 313.)

IX.—AS TO SALT SPRINGS AND MINERALS.

1. The grant of salt springs contained in the act admitting Illinois into the Union includes all salt springs, discovered and undiscovered, to which the President of the United States has thought, or shall think, it necessary to annex lands for the purpose of working them, and no other.—(1: 420.)

2. The discretion previously exercised by the President in declining to withhold from sale such springs as were supposed to be of little value, is neither impaired nor taken away by the act admitting Illinois into the Union.—(*Ibid.*)

3. The effect of the grant is merely to place the State of Illinois, in regard to these springs and reservations of land, exactly on the ground which had been previously occupied by the United States.—(*Ibid.*)

4. The President has the power to reserve from public sale any or all of certain mineral lands in Wisconsin, and may, if he deem it advisable, lease them.—(3: 277.)

5. Where, from want of proper and necessary information, he shall

have failed to make the necessary reservation prior to the public sale, it is competent for him then to direct the reservation —(*Ibid.*)

6. Lands containing iron ore merely, are not to be considered as “mineral lands” within the meaning of the act of 1st March, 1847; but they are to be disposed of according to the laws in relation to the disposition of other public lands.—(5: 247.)

7. The President has unrestricted power to lease the lead mines, on such conditions as he may think proper, for any term not exceeding three years, providing the leases be not inconsistent with existing laws.—(1: 593.)

8. There is no material difference between the two acts concerning the lead mines, only that leases under the one are limited to three, and under the other to five years.—(2: 708.)

9. The power to lease the mines necessarily includes the power to collect rents, and to take all proper measures to effect that object.—(*Ibid.*)

10. The several acts of Congress relating to the saline and mineral lands confer a general authority upon the President to lease the lead mines.—(4: 93.)

11. The President has no authority, under the Constitution, to dispose of, by lease or otherwise, any portion of the public lands without authority of law; and the authority to lease mineral lands is limited by law to salt springs and lead mines, and the necessary contiguous sections.—(4: 480.)

12. Wherefore the President is without authority to lease, or cause to be leased, lands which contain mines of copper or silver as the predominating mineral.—(*Ibid.*)

13. Whether or not certain locations made under permits given by the superintendent of mineral lands, and the expenditure of moneys there, entitle claimants to leases, if there were authority to execute them; *query*.—(*Ibid.*)

14. The practice of leasing salines and lead mines has so long prevailed, under a construction of the laws which has received a very general assent, that the Executive would not now be justified in declining to exercise the power, and thus deprive the treasury of the revenues to be derived from the mining operations notoriously going on at the lead mines in Iowa.—(4: 499.)

15. The Hot Springs in the State of Arkansas are the property of the United States, having been reserved from entry or sale by express act of Congress.—(6: 697.)

16. None of the parties asserting title thereto, either by pre-emption,

location, or otherwise, present any satisfactory proof of such title as against the United States.—(*Ibid.*)

17. Mines of the precious metals belong to the eminent domain of the political sovereignty, as well by the laws of Spain as by the common law of England and the public law of the United States.—(7: 636.)

X. SALE OF LANDS FOR TAXES.

1. Minors have the right to redeem their lands sold for taxes at any time within two years from the removal of the disability by payment of the purchase money with ten per cent. thereon, and compensation for improvements, whether deeds have been given to the purchasers or not; for no deed is valid unless given in pursuance of law, and the law does not authorize the giving of a deed until the time of redemption shall have expired.—(1: 378.)

2. Where lands liable for a direct tax are not divisible the whole must be sold.—(1: 401.)

3. Lands sold for taxes may be redeemed within two years upon payment of the amount paid by the purchaser with 20 per cent. interest.¹—(*Ibid.*)

¹ *As to the title of the United States to public lands*, see *United States vs. Fitzgerald*, 15 Pet., 407; *Wilcox vs. Jackson*, 13 Pet., 498; *United States vs. Gratiot*, 14 Pet., 526; *Bagnell vs. Broderick*, 13 Pet., 436; *Doe vs. Braden*, 16 How., 635; *Hughes vs. Clarksville*, 6 Pet., 369.

Reservations and surveys.—*Doddridge vs. Thompson*, 9 Wheat., 469; *Reynolds vs. McArthur*, 2 Pet., 417; *Menard's heirs vs. Massey*, 8 How., 393; *United States vs. Chicago*, 7 How., 185; *United States vs. Gear*, 3 How., 120; *Brown's lessee vs. Clements*, 3 How., 650.

Rights acquired by private persons.—1. By Patent. *Patterson vs. Jenks*, 2 Pet., 216; *Galloy vs. Finley*, 12 Pet., 264; *Boardman vs. Reed's lessees*, 6 Pet., 328; *Landes vs. Brant*, 10 How., 348; *Bouldin vs. Massie's heirs*, 7 Wheat., 122.

2. By pre-emption and warrant.—*Cunningham vs. Ashley*, 14 How., 377; *Lytle vs. Arkansas*, 9 How., 314; *United States vs. Fitzgerald*, 15 Pet., 401; *Surgett vs. Lapice*, 8 How., 48.

Conflicting Claims.—*Barry vs. Gamble*, 3 How., 32; *Ballauce vs. Forsyth*, 13 How., 18; *New Orleans vs. De Armas*, 9 Pet., 223; *Ross vs. Barland*, 1 Pet., 655; *Delauriere vs. Emison*, 15 How., 525; *Mobile vs. Eslava*, 15 Pet., 234; *Stringer vs. Young's lessee*, 3 Pet., 320; *Hunt vs. Wickliffe*, 2 Pet., 201; *Hoofnagle vs. Anderson*, 7 Wheat., 212; *Brush vs. Ware*, 15 Pet., 93; *Robinson vs. Minor*, 10 How., 627; *Bissell vs. Penrose*, 8 How., 317; *Campbell vs. Doe*, 13 How., 244; *Haydel vs. Dufresne*, 17 How., 23.

LARCENY.

1. The fraudulent taking of copies of invoices, manifests, bills of lading, letters, and a deposition, from the possession of a clerk in the Department of State, who had charge of the papers of the late board of commissioners for adjusting claims of citizens of the United States against Mexico, does not seem to come within any law for the punishment of crime.—(5 : 523.)

(See CRIMES.)

2. T. A. R., clerk in a post office, was indicted for purloining money from letters, but the jury on three successive trials failed to agree. On the arrest of R., bank-notes found in his possession were seized by the officer on probable suspicion of being the stolen money or the proceeds, but the same has not been identified: *Held*, that if R. be acquitted, or the prosecution discontinued, the bank-notes must be returned to him.—(7 : 74.)

LAW OF NATIONS.¹

1. The law of nations, although not specially adopted by the Constitution or any municipal act, is essentially a part of the law of the land.—(1 : 27.)

2. It is an offence against the laws of nations for any persons, whether citizens or foreigners, to go into the territory of Spain with intent to recover their property by their own strength, or in any manner other than its laws permit.—(1 : 68.)

3. A ship entering the port of a friendly nation with slaves on board is not, by the law of nations, responsible to the local authorities of that nation so long as the slaves remain on board.—(4 : 98.)

4. In the case of a compulsory entry of a foreign port under an overruling necessity, the enforcement of the municipal law of that nation having jurisdiction over the port to the subversion of the authorities and rights guaranteed by its own country, is not in any respect justifiable.—(*Ibid.*)

5. If a vessel be compelled by any overruling necessity to take refuge in the ports of a foreign nation, she is not subject to the mu-

¹ The municipal laws of one nation do not extend, in their operation, beyond its own territory, except as regards its own citizens. A seizure for the breach of the municipal laws of one nation cannot be made within the territory of another.—*The Apollon*, 9 Wheat. 362.

One nation cannot execute the penal laws of another, and consequently a foreign vessel engaged in the slave trade cannot lawfully be captured by an American cruiser.—*The Antelope*, 10 Wheat., 66.

Nations may prevent the violation of their laws by seizures on the high seas, in the neighborhood of their coasts, and there is no fixed rule prescribing the distance from the coast, within which such seizures may be made —*Church vs. Hubbard*, 2 Cranch, 187 ; see, also, *Rose vs. Himely*, 4 Cranch, 241 ; *The Santissima Trinidad and The St. Ander*, 7 Wheat., 283.

As to belligerents.—*The Nercide*, 9 Cranch, 388 ; *The Anna Maria*, 2 Wheat., 327 ; *The Eleanor*, 2 Wheat., 345 ; *The Palmyra*, 12 Wheat., 1.

Change of sovereignty and its consequences.—It belongs exclusively to the government to recognize the political existence of new foreign states, and, until it does so, courts must consider the old state of things as remaining.—*Gelston vs. Hoyt*, 3 Wheat., 246 ; see, also, *Martin vs. Waddell's lessee*, 16 Pet., 367 ; *Keene vs. McDonough*, 8 Pet., 308 ; *United States vs. Palmer*, 3 Wheat., 610 ; *United States vs. Rice*, 4 Wheat, 246 ; *Fleming vs. Page*, 9 How., 603 ; *Society for the Propagation of the Gospel, &c., vs. New Haven*, 8 Wheat., 464 ; *Shanks vs. Dupont*, 3 Pet., 242.

municipal law of that nation so far as concerns any penalty, prohibition, tax, or incapacity, that would otherwise be incurred, provided she do nothing further to violate the municipal law during her stay.—(*Ibid.*)

6. The government ought not to form an opinion upon the affair of the Peacock and Nautilus upon *ex parte* reports transmitted by the British minister. A court of inquiry will doubtless be the proper step.—(5 : 703.)

7. The international extradition of fugitives from justice is a duty of comity not of strict right.—(6 : 85.)

8. It is the settled policy of the United States not to make such extradition except in virtue of express stipulations to that effect: Hence, the United States ought not to ask for extradition in any case as an act of mere comity.—(*Ibid.*)

9. Larceny is not included in the causes of extradition stipulated as between Great Britain and the United States.

10. Any foreign government entitled by treaty to the extradition of a fugitive from justice may apply to the courts in the first instance; but, if requested, the President will issue the previous authorization held to be necessary by a portion of the court in Kaine's case.¹—(6 : 91.)

11. On a party being arrested for extradition and brought before a magistrate, that magistrate examines the case judicially; and his decision is not subject to any direction on the part of the President: Hence, the question of remanding the prisoner for further examination, and the time of remanding, are questions for the magistrate to determine.—(*Ibid.*)

12. The alleged fugitive may be arrested a second time on a new complaint, either with or without a new warrant of the President.—(*Ibid.*)

13. According to the law of nations, neutrals have the right to purchase during war the property of belligerents, whether ships or anything else; and any regulation of a particular State, which contravenes this doctrine, is against public law, and in mere derogation of the sovereign authority of all other independent States.—(6 : 638.)

14. A citizen of the United States may at this time lawfully purchase a merchant ship of either of the belligerents, Turkey, Russia, Great Britain, France, or Sardinia; if purchased *bona fide*, such ship becomes American property and entitled as such to the protection and to the flag of the United States; and although she cannot take out a

¹ 14 Howard, 103.

register by our law, yet that is because she is foreign built, not because she is belligerent built; and she can obtain a register by special act of Congress.—(*Ibid.*)

15. The different states of Christendom are combined, by religious faith, by civilization, by science and art, by conventions, and by usages or ideas of right having the moral force of law, into a community of nations, each politically sovereign and independent of the other, but all admitting much interchange of legal rights or duties.—(7: 18.)

16. As between themselves, the general rule of public law is, that each independent State is sovereign in itself, and has more or less complete jurisdiction of all persons being, matters happening, contracts made, or acts done, within its own territory.—(*Ibid.*)

17. When we speak of the law of nations, we mean the international law of the nations of Christian Europe and America. Our treaties with nations other than these bring them practically within the pale of our public law, but it is only as to *political* rights; municipal rights remain as they were.—(*Ibid.*)

18. Belligerent ships-of-war, privateers, and the prizes of either are entitled, on the score of humanity, to temporary refuge in neutral waters from casualties of the sea and land.—(7: 122.)

19. By the law of nations, belligerent ships-of-war, with their prizes, enjoy asylum in neutral ports for the purpose of obtaining supplies or undergoing repairs, according to the discretion of the neutral sovereign, who may refuse the asylum absolutely, or grant it under such conditions of duration, place, and other circumstances, as he shall see fit, provided that he must be strictly impartial in this respect towards all the belligerent powers.—(*Ibid.*)

20. Where the neutral State has not signified its determination to refuse the privilege of asylum to belligerent ships-of-war, privateers, or their prizes, either belligerent has a right to assume its existence, and enter upon its enjoyment, subject to such regulations and limitations as the neutral State may please to prescribe for its own security.—(*Ibid.*)

21. The United States have not by treaty with any of the present belligerents bound themselves to accord asylum to either; but neither have the United States given notice that they will not do it; and of course our ports are open, for lawful purposes, to the ships-of-war of either Great Britain, France, Russia, Turkey, or Sardinia.—(*Ibid.*)

22. A foreign ship-of-war, or any prize of hers in command of a public officer, possesses, in the ports of the United States, the rights

of extritoriality, and is not subject to the local jurisdiction.—(*Ibid.*)

23. A prisoner of war, on board a foreign man-of-war, or her prize, cannot be released by *habeas corpus* issuing from courts either of the United States or of a particular State. But, if such prisoner of war be taken on shore, he becomes subject to the local jurisdiction or not, according as it may be agreed between the political authorities of the belligerent and the neutral power.—(*Ibid.*)

24. The nations of Europe and America, while independent each of the other in political sovereignty, are yet associated together by common ties in a great commonwealth of States.—(7: 229.)

25. In their mutual intercourse, these nations recognize, and more or less obey, certain rules of right, partly natural and partly conventional, which oblige their consciences, and control their actions, in war as well as in peace, and which constitute the law of nations.—(*Ibid.*)

26. This law of nations is subdivided into two great parts; one, which treats of the reciprocal duties and rights of nations personified and in their public relation as nations; and another, which treats of the duties and rights of each nation in its relation to individuals of another nation.—(*Ibid.*)

27. Each of the nations of Europe and America has exclusive jurisdiction within itself to pass laws and to administer them, and to employ its aggregate force to maintain obedience to its local authority, administered primarily for the good of the members of its own nationality.—(*Ibid.*)

28. But each nation admits foreigners of other friendly nations to enter its territory for certain limited peaceful and private objects of commerce, instruction, social intercourse, denizenship, or the like; and the legal condition of such foreigners is regulated by the international law private, as distinguished from the public international law.—(*Ibid.*)

29. None of the nations of Europe or America concede to transient, commorant, or denizen foreigners all the advantages of the domestic nationality; nor can such foreigners rightfully pretend to any special or exclusive rights or peculiar privileges at the hands of the local government.—(*Ibid.*)

30. In its internal organization, each government has public officers, administrative, judicial, or ministerial, which officers are the agents of the community for the conduct of its public or common affairs, and of many private affairs, and are individually responsible to their country, and in many cases to individuals, for acts of political or official misbehavior; but the government itself is not responsible

to private individuals for injuries sustained by reason of the acts of such officers in the private business with which they may be officially concerned, though as public agents yet for individual benefit only ; it is responsible only for such injury to individuals as may occur by acts of such officers performed in the proper behoof and business of the government.—(*Ibid.*)

31. Thus, governments hold themselves responsible to individuals for injuries done to the latter by public officers in the collection of the revenue or other administrative acts of governmental relation ; but not for the errors of opinion, or corruption even, of administrative, judicial, or ministerial officers, when such officers are administering their public authority in the interest of individuals as distinguished from the government.—(*Ibid.*)

32. Hence, the State of California is not responsible to a citizen of the United States for injury which his vessel may have sustained by the unskilfulness of a pilot at San Francisco ; and *a fortiori* that State is not responsible in such case if the vessel belonged to a citizen of the Peruvian republic.—(*Ibid.*)

33. Hence, also, the United States are not responsible to a citizen of the United States for the failure of a marshal to collect an execution ; and *a fortiori* the United States are not responsible in such case if the execution belonged to a citizen of the Peruvian republic.—(*Ibid.*)

34. In such a case, our courts of law are open to the individual who pretends himself aggrieved by the act of the pilot or that of the marshal ; but the government is not surety for their acts ; and the Peruvian republic has no rights of reclamation in the premises against the United States for any imputed default, either of its own officer or the officer of the State of California.—(*Ibid.*)

35. A consul may be authorized to communicate directly with the government near which he resides ; but he does not thereby acquire the diplomatic privileges of a minister—(7 : 342.)

36. Nor does he, *as consul*, acquire such privileges by being appointed, as he may, at the same time *chargé d'affaires*.—(*Ibid.*)

37. To the question whether a consul can solemnize marriage or not, as consul, it is wholly immaterial whether he be or not a subject of the foreign government.—(*Ibid.*)

38. The extritoriality of foreign consuls in Turkey and other Mohammedan countries is entirely independent of the fact of diplomatic representation, and is maintained by the difference of law and

religion ; being but incidental to the fact of the established extritoriality of Christians in all countries not Christian—(*Ibid.*)

39. Consuls, as international commercial agents, originated in the colonial municipalities of the Latin Christians in the Levant, which municipalities were self-governing through their “consuls,” the ancient title of municipal magistrates in Italy.—(*Ibid.*)

40. Rights of private extritoriality having ceased to exist in Christendom, foreign consuls have ceased, mostly, to be municipal magistrates of their countrymen there ; but they still continue not only international agents, but also administrative and judicial functionaries of their countrymen in countries outside of Christendom.—(*Ibid.*)

41. It was the practice of the Spanish crown, during the reigns of Charles I, and his successors of the Austrian dynasty, to delegate to Spanish viceroys, governors, and captains general, the *jus legationis*, as well in Europe as in Asia and America ; and that delegation was recognized by the public law of Europe.—(7 : 551.)

42. Citizens of the United States, in common with all other foreign Christians, enjoy the privilege of extritoriality in Turkey, including Egypt ; the same in the Turkish regencies of Tripoli and Tunis ; and also in the independent Arabic States of Morocco and Muscat.—(7 : 565.)

43. According to the public law of the monarchies of Europe, the authority of ministers, and perhaps of international commissioners, expires on the death, deposition, or abdication of the prince ; but not so as between the American republics, in which the executive power is permanent and continuous, without regard to the governing person, and there is no interruption of the authority or renewal of the credentials of their public ministers on a change of President for whatever cause, provided such President continues to represent and exercise the appointing power of the government.—(7 : 582.)

44. The United States observe, as their rule of public law, to recognize governments *de facto*, and also governing persons *de facto*, without scrutiny of the question of legitimacy of origin or accession.—(*Ibid.*)

45. Hence, in this case, the Mexican commissioner, Mr. Salazar, being duly appointed by President Santa Anna, continued to be competent to act after the sequent accession of President Carrera, and his official agreement, signed then, if otherwise regular and complete, definitively establishes the line as respects the Mexican republic.—(*Ibid.*)

LEASE.

1. In general, a lessee has the right to underlet, unless there be a covenant to the contrary in the original lease.—(7 : 598.)

LEGACIES.

1. The entire legacy bequeathed to the United States by James Smithson, for the purpose of founding an establishment in the city of Washington for the increase and diffusion of knowledge, should be kept entire for effectuating the purposes of the testator.—(3 : 383.)

2. The expenses of prosecuting for the said legacy, and of receiving and transporting it to this country, including additional expenses incurred, ought, therefore, to be defrayed out of the appropriation made by Congress.—(*Ibid.*)

3. The personal effects, other than cash and stocks, which have been transferred to the United States, should be disposed of as Congress may direct.—(*Ibid.*)

LIABILITY.

1. The superintendent for construction and repair of the Cumberland road may be allowed to disburse funds committed to his care, by turning over the same to officers employed under him ; yet he must be held personally accountable at the treasury for the correct disbursement thereof.—(3 : 140.)

2. The liabilities consequent upon a reappointment to an office already held do not commence until the term commences for which such reappointment is made.—(3 : 626.)

3. The executive officers are not subject to suit for acts done in the regular discharge of their official duties.—(5 : 759.)

4. The Treasurer of the United States is not liable to the process of attachment for the salaries of clerks in the departments.—(*Ibid.*)

5. During the war between the United States and the Mexican republic, while General Taylor occupied the line of the Rio Grande, one Lund undertook to set up ferry across the river, in which he was interrupted by Major Ogden, of the United States, in obedience to the command of General Taylor.—(6 : 75.)

6. *Held*, that no action lay against Major Ogden for this act. *Held*, also, that on a suit brought by Lund against him in the State of Texas, he not residing there, and having never held a domicil there, and no personal service in Texas having been made on him, and he not having property in the State, no valid judgment can be rendered, at least, none which can be made effective out of the State of Texas.—(*Ibid.*)

LIBEL.

1. Any malicious publication tending to render another ridiculous, or to expose him to public contempt and hatred, is a libel ; and in the case of a foreign public minister the municipal law is strengthened by the law of nations, which secures the minister a peculiar protection from violence and insult.—(1 : 52.)

2. Certain letters addressed to Philip Fatio and published, concerning the King of Spain and his minister plenipotentiary here, are libellous, and the editor is indictable.—(1 : 71.)

3. A malicious defamation of any person, and especially a magistrate, by printing, writing, signs or pictures, in order to provoke him to wrath, or expose him to public hatred, contempt, and ridicule, is a libel.—(*Ibid*)

LIMITATION.

1. Minors have the right to redeem their lands, sold for taxes, at any time within two years from the removal of the disability.—(1: 378.)

2. The accused cannot be tried by court-martial after two years from the issuing of the order, even on his own application, unless, by reason of absence or some other manifest impediment, he shall not have been amenable to justice within the time limited by the articles of war.—(1: 383.)

3. Lands sold for taxes may be redeemed within two years, upon payment of the amount paid by the purchaser, with twenty per cent. interest.—(1: 401.)

4. Lapse of time, whilst it furnishes strong presumptive evidence against the justice of claims, is no bar to payment. The delay may be accounted for.—(2: 463.)

5. Where a claim has been rejected by the accounting officers, and their decision has been confirmed by the Secretary of War on appeal, it is doubtful whether the successor of the latter can review his decision. Unless claims finally decided by the proper department shall in general be considered *res judicata*, every change in the officers thereof will produce a new hearing of the same, and the accounts of the government will remain open and undecided.—(*Ibid.*)

6. According to the 88th of the articles of war, no person is liable to be tried and punished by a general court-martial for any offence which shall appear to have been committed more than two years before the issuing of the order for such trial, unless the person, by reason of having absented himself, or some other manifest impediment, shall not have been amenable to justice within that period.—(6: 239.)

7. This limitation cannot be waived by the accused, nor can he, even with his consent, be tried by a general court-martial ordered after the time prescribed by statute.—(*Ibid.*)

8. But this limitation does not apply to courts of inquiry; for the objects of a court of inquiry are not confined to investigation as preparatory to a court-martial, but extend to the legal procurement of information of any sort material to the military service or the discipline and government of the army.—(*Ibid.*)

9. A prosecution of an officer before court-martial having been instituted, and the party arraigned within the two years required by law, and he pleading the pendency of civil proceedings arising in the matter, whereupon the proceedings of the court-martial were suspended until a period after the lapse of the two years: *Held*, that the statute of limitations could not then be pleaded in the case.—(6 : 506.)

10. No right of action accruing to the United States is barred by lapse of time, unless where there may be special provision by act of Congress to that effect.—(7 : 614.)

LOANS.

1. Although the 13th section of the funding act admits subscriptions to the loan payable in the principal and interest of certain State certificates or notes, *redeemed* notes cannot be used for that purpose.—(1: 25.)

2. Private or extra judicial caveats lodged with the Commissioner of Loans, when founded on some specific claim or lien on the stock created by the proprietor himself, ought to be respected.—(2: 173.)

LOCALITY.

1. The treasury of the United States has no locality, and credits upon it are not *bona notabilia* confined to the District of Columbia.—(6: 557.)

MARRIAGE.

1. Marriage, so far as its validity in law is concerned, in New York, is considered as a civil contract, no formal solemnization by a minister or any particular officer being requisite.—(3: 287.)

2. Consuls of the United States have no lawful authority as such to solemnize marriages in countries comprehended within the pale of the public law of Christendom.—(7: 18.)

M A R S H A L .

I. GENERALLY.

II. COMPENSATION.

I.—GENERALLY.

1. Marshals are not required by law to execute the sentence of a French consul arising under the 12th article of the convention with his most Christian Majesty and the United States.—(1 : 43.)

2. The United States may sue a marshal on his bond for misfeasance of himself or deputies. Individuals injured by his official misconduct may use the name of the United States in prosecuting a suit on the bond.—(1 : 92.)

3. Under the act of 8th of May, 1792, for regulating processes, &c., allowances may be made to marshals for supplying any of the necessities of life to prisoners.—(1 : 322.)

4. A marshal may bring a suit against the sureties of a defaulting deputy whenever the marshal has become liable to a suit on his bond to the United States by reason of such default.—(1 : 363.)

5. Marshals are not authorized to pay fees to witnesses who are imprisoned to secure their attendance at court only for the time the court is in session.—(1 : 425.)

6. The “contingent expenses” of courts which marshals are allowed to pay are only those which arise in the holding of court, according to appointment, at the specified time and place.—(*Ibid.*)

7. The general provisions of the 24th section of the judicial act of 1789 confer no authority upon the President to appoint marshals in districts created subsequently to its passage.—(2 : 253.)

8. The practice, in New York, of giving the custody of goods libelled to the marshal is erroneous ; the collector is legally entitled to the keeping of the property, after the proceedings are instituted as well as before.—(2 : 496.)

9. Where a marshal, appointed by the President during a recess of the Senate, is subsequently nominated to the Senate for the office and confirmed, and a new commission issued to him, he should execute a

new bond to the government.—(2 : 500.—See *Kirkpatrick vs. United States*, 9 Wheaton, 720.)

10. Marshals are liable to account to the United States for moneys paid to their deputies on execution, even though the return day of the execution may have passed ; and defendants in such execution who shall have paid money on the same after the return day are entitled to be credited at the treasury for such payments.—(3 : 78.)

11. Where a marshal received, in due course of law, processes of summons and subpoena for the same witness, (it being the usual mode of procuring the attendance of witnesses in the court from which they issued,) and served the same as required, he is entitled to his fees for both services on their being allowed and certified by the district judge.—(3 : 496.)

12. Marshals have no control over the practice of the courts, nor over the kind of process which they may issue ; they are simply bound, as officers of the courts, to execute the process issued to them.—(*Ibid.*)

13. In a matter of general and established practice, the regular taxation of the costs, and their allowance in due form by district judges, are binding and conclusive upon the accounting officers.—(*Ibid.*)

14. The district marshal of the United States should obey an injunction issued against him by the superior court of a Territory.—(3 : 643.)

15. The marshal of the district of Georgia, appointed whilst such district covered the entire State, continued in office after the State was divided, as marshal of both districts, and his bail continued liable for his acts.—(5 : 96.)

16. Although the marshal of Massachusetts (Devens) might have been more energetic and active in executing a warrant for the arrest of Carafra, a fugitive slave, no sufficient cause is shown for removing him from office.—(5 : 272.)

17. The marshal and his deputies appear to have acted, to a considerable extent, upon consultation with the agent of the owner of the fugitive, who, at the conclusion of the examination, observed that he had no complaint to make against them.—(*Ibid.*)

18. The President advised not to remove the marshal of Ohio on the *ex parte* statements of the complainants, but to enclose the papers to the district attorney of Ohio, with instructions to proceed or not as the evidence shall direct him.—(5 : 732.)

19. Where a marshal of the United States has in custody a fugitive from foreign justice under warrant of extradition from the proper

authorities of the United States, and a State court undertakes to usurp jurisdiction of the case, it is the duty of the marshal, disregarding any process of the State court, to take the party to the exterior line of such State, and there deliver him to the agent of the foreign government.—(6 : 290.)

20. The marshal of the United States for the southern district of Florida cannot at the same time hold the office of commercial agent of France.—(6 : 409.)

21. A marshal of the United States, when opposed in the execution of his duty by unlawful combinations, has authority to summon the entire able-bodied force of his precinct as a *posse comitatus*.—(6 : 466.)

22. This authority comprehends not only bystanders and other citizens generally but any and all organized armed force, whether militia of the State, or officers, soldiers, sailors, and marines of the United States.—(*Ibid.*)

23. If the object of resistance to the marshal be to obstruct and defeat the execution of provisions of the Constitution or of acts of Congress, the expenses of such *posse comitatus* are properly chargeable to the United States.—(*Ibid.*)

24. Attempts in any State of the Union to prevent the extradition of fugitives from service are covered by the principles of this opinion.—(*Ibid.*)

25. In case of vexatious suits against marshals of the United States for lawful acts done by them in the extradition of fugitives from service, the President may authorize the employment of counsel in their behalf by the United States.—(6 : 500.)

26. The United States, as a government, have no responsibility or interest in the question whether a marshal succeeds or not in levying upon or holding property taken to satisfy an execution in a private suit, issued by some district court.—(7 : 350.)

27. In a question of conflict of jurisdiction between a district court of the United States and the supreme court of a State, which question arises on a writ of *habeas corpus ad subjiciendum* issued by the latter to inquire into the legality of the detention of a prisoner by the marshal on the order of the former, it is proper for the Executive of the United States to allow counsel to the marshal, leaving the case otherwise to the regular course of judicial determination, until the question be duly determined by the Supreme Court of the United States.—(7 : 482.)

II.—COMPENSATION.

1. A marshal is not entitled to the commission of one and a quarter per cent. under act of 28th February, 1799, upon specie captured, as in cases where he sells vessels and other property.—(1: 178.)

2. The act providing for the taking of the fifth census permits the marshals to assign to themselves parts of their respective districts, but does not make any provision under which they can lawfully receive any part of the compensation allowed to assistants.—(2: 339.)

3. Assistants of marshals, however, have a perfect claim on the government for the payment of the compensation to which they are entitled, as soon as they have complied with the requisitions of the law.—(2: 416.)

4. There is no act of Congress which makes the United States liable for the marshal's fees in the case of the discharge of a debtor from imprisonment, and the Treasury Department, therefore, is not authorized to pay a claim made for them.—(2: 459.)

5. Where a marshal received, in the due course of law, processes of summons and subpoena for the same witnesses (it being the usual mode of procuring the attendance of witnesses in the court from which they issued) and served the same as required, he is entitled to his fees for both services, on their being allowed and certified by the district judge.—(3: 496—536.)

6. The marshal cannot disregard the orders or process issued by the court, even though they are superfluous, but must execute such as shall be issued to him in the ordinary practice, and for which he is entitled to the prescribed fees at the hands of the government.—(3: 536.)

7. The taxation of the court and the allowance and certificate of the judge are conclusive upon the accounting officers when the service or purpose is enumerated in the act of Congress, and the sum allowed therefor is not exceeded.—(*Ibid.*)

8. The marshal cannot be allowed more for the service of a summons, where a subpoena and summons shall have been issued to him to obtain the attendance of a single witness, than the sum prescribed for summoning a single witness.—(*Ibid.*)—See *Compensation, ante.*

9. Marshals are entitled to compensation for transporting witnesses in custody, though it be not mentioned by the statute, by analogy of the statute compensation for the transportation of criminals.—(6: 58.)

10. When combinations exist among the citizens of one of the States to obstruct or defeat the execution of acts of Congress, and the question

of the constitutionality of such laws is made in suits against a marshal of the United States, the President is justified in assuming his defence on behalf of the United States.

Hence, a marshal being harassed with suits on account of his official action in the extradition of a fugitive from service, his defence may well be undertaken by the United States.—(6 : 220.)

11. Where a court of one of the States assumes to take, by *habeas corpus*, out of the hands of a marshal of the United States a person held by him as a fugitive from crime committed in a foreign country, and under reclamation by treaty, the United States may well, by counsel and direction, protect their marshal in the maintenance of the laws and in discharge of public faith towards the reclaiming foreign government.—(6 : 227.)

12. A marshal of the United States, when called upon to serve due process for the arrest of an alleged fugitive from service, has no absolute right to demand a bond of indemnity as the consideration of making service.—(6 : 229.)

13. Such bond may lawfully be given by the claimant; but if he refuses, and the marshal thereupon refuses to proceed, the latter will be responsible in damages or not according as the proofs may appear of the claimant's right of reclamation of service in the case.—(*Ibid.*)

14. In case where a person, claimed as a fugitive from foreign justice, is under examination before a commissioner of the United States, it is not in the lawful power of a State court to revise the case on *habeas corpus* and assume to overrule the commissioner.—(6 : 237.)

15. It is the right of the marshal of the United States to refuse to have the body of the party before the State court, and it is the duty of the courts and other authorities of the United States to protect the marshal in such refusal by all means known to the laws.—(*Ibid.*)

16. The fees of a marshal for bringing in and returning and the intermediate commitment of prisoners or witnesses in cases pending before the commissioner, are embraced in the per diem allowance made by the statute for attendance of the marshal and his deputies at the trial.—(7 : 667.)

17. The same rule applies for the same service in cases pending in the circuit or district court.—(*Ibid.*)

MEDAL.

1. Where a medal was ordered to be struck and, before the resolution of Congress had been executed, the individual for whom it was intended died, it was deemed proper that it should be struck and delivered to the decedent's son and administrator.—(3: 640.)

MICHIGAN.

1. Under an act of Congress, granting to the State of Michigan a certain number of sections of land for the use of a university therein, the State selected, applied for, and received the requisite number of sections—some of the sections, thus deliberately selected, being fractional sections: *Held*, that the State cannot now revise its selections and obtain additional lands to make the sum total of acres what it would have been if all the selections had been complete sections.—(6: 725.)

MILITARY ACADEMY.

1. No person has the right to enter the limits of the post at West Point, not even to visit the post office there, unless specially authorized by the laws of the United States, or by some officer having authority to grant permission.—(3 : 268.)

2. Persons in civil life, residing permanently or temporarily at the post, or occasionally resorting to the hotel, may be prevented by the superintendent of the academy from interrupting its discipline or obstructing in any way the performance of the duties assigned by law to the officers and cadets.—(*Ibid.*)

3. The commandant of the post may order from it any person not attached to it by law, whose presence is, in his judgment, injurious to the interests of the academy; and he may be lawfully removed by force.—(*Ibid.*)

4. When, however, the United States have leased a dwelling-house within the post belonging to them, to an individual, they have no greater right than an individual would have in respect to ejectment of the lessee.—(*Ibid.*)

MILITIA.

1. With certain qualifications, it is the duty of officers of the quartermaster's department to make disbursements on account of the militia when called into the service of the United States.—(2: 711.)

2. There are no acts of Congress providing pay, rations, and expenses to militia called out by State or territorial authority, but disbanded without their having been employed or mustered into the service of the United States previous to their dismissal; such cases, as they have arisen, having been, from time to time, specially provided for.—(3: 528.)

3. The government is not bound to pay such of the Florida militia as disbanded voluntarily, and without authority, and refused to render service.—(3: 687)

4. Nor is the government bound to pay such as were mustered and then directed to repair to their homes to remain in readiness to serve at a moment's notice.—(*Ibid.*)

5. The disbanding was a virtual discharge from *actual* service; and, during such discharge, they were not entitled to pay as soldiers of the United States.—(*Ibid.*)

MINES.

(SEE LANDS, PUBLIC, IX.)

MINISTER, (PUBLIC.)

1. If a foreign ambassador commit an offence in our country it belongs to the President, not to an individual citizen, to take notice of it.—(1: 71.)

2. An ambassador is not liable in any case, according to the law of nations, to answer either criminally or civilly before any court of the foreign nation to which he is sent.—(*Ibid.*)

3. A foreign minister should correspond with the Secretary of State on matters which interest his nation, and not through the press of our country. He has no authority to communicate his sentiments to the people of the United States by publications in manuscript or print, and his doing so is a contempt of the government.—(1: 74.)

4. The entry into a minister's garden by the agent of the owner of a slave, and there seizing and carrying away such slave to the owner, is not such a violation of the domicil of the minister as constitutes an offence.—(1: 141.)

5. The immunities of a minister's domicil cannot extent to his garden.—(*Ibid.*)

6. The certificates of foreign ministers do not seem to compose a part of the regular papers with which a ship is usually furnished for the protection of herself and cargo.—(1: 162.)

7. The President being intrusted with the subject of the diplomatic intercourse of the United States with foreign nations, may, in his discretion, advance money to a minister going abroad over and above his outfit.—(2: 170.)

8. Mr. Barrozo Pereira, the Portuguese chargé d'affaires, was, on the 30th October, 1829, entitled to the respect and immunities of a public minister, notwithstanding the assumption of regal power in Portugal of Don Miguel in exclusion of Don Pedro.—(2: 290.)

9. The change which had occurred in the political condition of his country was not yet consummated. The uncertainty which induced him to suspend instead of terminating his functions was the same uncertainty which delayed the recognition by the United States of the existing government of Portugal. Until that was done, it could not consider as valid any act of that government affecting Mr. Barrozo; and his own act, unnoticed as it was by this government, was open to the explanation which he gave of it.—(*Ibid.*)

10. The minister to Madrid is not entitled to charge for office rent, although similar charges have been allowed to our ministers to London and Paris, the same not being warranted by law, nor having been the usage of the government.—(2: 453.)

11. The cost occasioned by non-acceptance of a draft drawn by the chargé d'affaires at Lima should be paid by the government if he was authorized to draw it.—(2: 505.)

12. Where the chargé d'affaires to New Grenada was authorized to draw upon the Barings for his salary, and such drafts brought a premium: *Held*, that he was chargeable with such premium, and must be considered to hold it in trust for the government.—(4: 295.)

13. The government was bound to pay the minister a stipulated salary of \$4,500 per annum, and, being thus liable, it was bound to make that amount available to him at his foreign residence; yet if, in the fiscal arrangements to make such salary available, he receive more than is his due, he is bound to account for it.—(*Ibid.*)

14. The government is liable for the costs made in a suit upon a draft drawn upon a banker abroad, by direction of the government, by a chargé d'affaires for his salary, and which was protested for non-payment. The government having devised that method of making salaries available to ministers and agents abroad, and having instructed them to draw upon a given banking-house, is bound to make reparation for any damages sustained in the way of costs occasioned by the non-acceptance or non-payment of the drafts.—(*Ibid.*)

15. The persons and household goods of foreign ambassadors, and those attached to their respective legations, are exempt from lawful arrest, seizure, or molestation, as well by the laws of nations as the act of Congress approved April 30, 1790.—(5: 69.)

16. It is therefore unlawful for the keeper of a hotel in Washington with whom the attaché of the legation of France is a boarder to oppose by force, in any manner, the removal therefrom of any of his personal effects.—(*Ibid.*)

17. Yet it is not incumbent on the Secretary of State to interfere in such cases. The act of Congress which forbids the act and prescribes the penalty refers them to the judiciary.—(*Ibid.*)

18. A minister to a foreign government is entitled to an outfit not exceeding one year's salary, though he were not in the United States at the time of his appointment.—(5: 139.)

19. The appropriation act of 1849 takes from the President any discretion as to the amount, and requires a full outfit to be paid Mr. Donelson, the claimant in this case.—(*Ibid.*)

20. A minister of the United States to the republic of Mexico is entitled, under the acts of May 1, 1810, and March 3, 1847, to an outfit of \$9,000, although he was not in the United States at the time of his appointment.—(5: 163.)

(See *Compensation*.)

21. There is no provision in the Constitution, nor in any law or treaty, which reaches the case of an insult to the Spanish minister.—(5: 691.)

22. The expression “ambassadors and other public ministers,” which occurs three times in the Constitution, must be understood as comprehending all officers having diplomatic functions, whatever their title or designation. Hence, the President has power by the Constitution to appoint diplomatic agents of the United States of any rank, at any place, and at any time, in his discretion, subject always to the constitutional conditions of relation to the Senate.—(7: 186.)

23. The power to make such appointments is not derived from, and cannot be limited by, any act of Congress, except in so far as appropriations of money are necessary to provide means for defraying the expenses of this as of any other business of the government.—(*Ibid.*)

24. During the entire administrations of Washington, John Adams, Jefferson, and the first term of that of Madison, no mention occurs in any appropriation act of ministers of a specified rank at this or that place; but, sometimes by special act, and sometimes in the general appropriation acts, the provision for the diplomatic corps consisted of so much money “for the expenses of foreign intercourse,” to be expended in the discretion of the President; and although since that time the practice has been to provide for certain ministers at certain places, yet that mode of legislation does not in terms, and could not in law, either extend or restrict the constitutional authority of the President, by and with the advice and consent of the Senate, to negotiate treaties and make diplomatic appointments, according to his and their judgment of the public interests of the Union.—(*Ibid.*)

25. Commencing with the administration of our foreign affairs by Mr. Jefferson under President Washington, and so continuing under every successive President down to the present time, it has been the uniform practice of the government to regard the titular designations and the appointments of all diplomatic ministers as the exclusive and proper constitutional function of the conjoint executive department, that is, the President and the Senate.—(*Ibid.*)

26. “Ambassadors,” by the public law of Europe, enjoy the highest privileges, because of the pretended or putative direct relation of the

ministers of this name to their sovereign ; but the imperial or regal sovereignty of a European monarchy neither has nor can have any public right in this respect which does not equally belong to the popular sovereignty of a republic like the United States.—(*Ibid.*)

27. The President has constitutional power to appoint, by temporary commission, a diplomatic officer to meet any public exigency arising in the recess of the Senate.—(*Ibid.*)

28. The President has constitutional power, in the recess of the Senate, to change the designation of any mission, either by substituting a higher for a lower rank, or a lower for a higher, independently of any authorizing act of Congress.—(*Ibid.*)

29. Congress cannot by law require that the President shall make removals or reappointments or new appointments of public ministers on a given day ; nor that he shall at all times appoint and maintain a minister of a prescribed rank at a particular court ; because, while the House of Representatives has control of the tax power and of appropriations, yet the Constitution has intrusted the whole negotiating power to the President in behalf of the aggregate Union, and to the Senate, composed of the legislative and executive ministers of the separate sovereignty and rights of each of the States of the Union.—(*Ibid.*)

30. When the act of the last Congress to remodel the diplomatic system of the United States declares that from and after the end of the present fiscal year the President *shall* appoint envoys extraordinary, with secretaries of legation, at every place except one in Europe, Asia, or America, where the United States now have any diplomatic agent, whether envoy, minister resident, chargé d'affaires, or commissioner, and proceeds to define the salaries of such envoys and secretaries, it could not constitutionally mean, and therefore is not to be construed as meaning, to *require* the President to make any such appointments, but only to determine what shall be the salaries of such officers, in case they have been, or shall be, lawfully appointed at any time by the President.—(*Ibid.*)

31. The phrase “from and after” a certain day, employed in the act, does not determine what its legal effect shall be, but only the time when that legal effect, whatever it is, shall commence.—(*Ibid.*)

32. The auxiliary verb “shall” in the act, wherever it occurs in reference to appointments, is only a word of time as to incidents, and never of command as to the main fact.—(*Ibid.*)

33. The act has no general phrase of repeal, and no effect of repeal

by implication, and repeals nothing except such specific things as it repeals in express terms.—(*Ibid.*)

34. The President may, notwithstanding this act, continue to appoint or to retain public ministers of the rank of commissioner, minister resident, or chargé d'affaires, in his discretion, with concurrence of the Senate.—(*Ibid.*)

35. The existing laws, which prescribe a rate of salary for ministers resident and chargés d'affaires, are not affected by this act, and still continue in full force.—(*Ibid.*)

36. Envoys extraordinary and secretaries of legation in office will, on the day fixed, be entitled to the benefits, and subject to the deductions, of the new provisions of this act regarding compensation, including salary whether increased or not, and prohibition of outfit or infit, without reappointment by the President.—(*Ibid.*)

37. The President may appoint envoys at the places where the present minister is a minister resident, and in that case the new envoy will be entitled to the salary prescribed by the act.—(*Ibid.*)

38. The President may leave unchanged all the ministers resident; in which case they will each be entitled severally to the salary prescribed by the pre-existing acts of Congress.—(*Ibid.*)

39. The President may or not, in his discretion, appoint secretaries of legation at the places mentioned in the act.—(*Ibid.*)

40. If the legal effect of the act could be considered as the prospective creation of new offices, to begin to exist at a future day certain, then the President might appoint on that day as for a vacancy then existing in the recess of the Senate; but as the office of public minister is, in fact, a constitutional, not a statute one, he might appoint without the act, and in virtue of the Constitution.—(*Ibid.*)

41. The phrase in the act "shall, by and with the advice and consent of the Senate, appoint," cannot take away any constitutional power of the President to appoint in the recess of the Senate, and has no effect save to negative the idea of its being intended to create any such "inferior officers," the appointment of which may be vested by Congress in the President alone or in the heads of departments.—(*Ibid.*)

42. The whole effect of the act as to appointments is, by the provision for new salaries on a given day, to invite the President to make new appointments on that day if he see fit; but whether he shall make them or not is a question of his mere executive discretion under the Constitution.—(*Ibid.*)

43. The question of executive discretion in the case, being wholly

independent of this act, is the permanent one, of wise and lawful discretion, having its measure in the exigencies of the public service and the letter and spirit of the Constitution.—(*Ibid.*)

44. The President may lawfully appoint new envoys and secretaries at all the places mentioned in the act; the act affords the pecuniary means of doing this; the President may well and should do this, in any particular case, where the public service seems to him to require it; but for him to change the *personnel* or raise the rank of the entire diplomatic service of the United States in the recess of the Senate, and without the concurrence of that co-ordinate authority, would not be a just exercise of the presidential discretion, whether in its relation to the ministers themselves, to the public service, or to the spirit of the Constitution.—(*Ibid.*)

45. The salary prescribed by existing law for all the present ministers resident, except one, is \$4,500; for that one, the minister to the Ottoman Porte, it is \$6,000; which latter sum is the general statute compensation of ministers resident in all cases, save where the lower salary is expressly prescribed by particular act of Congress.—(*Ibid.*)

46. Although the appropriation act of the last session of Congress, in appropriating for the diplomatic service of the next fiscal year, provides in terms for envoys extraordinary only, still that appropriation is, by collation with express provision of previous laws, subject to draft for the compensation of diplomatic officers of whatever rank lawfully in office by appointment of the President.—(*Ibid.*)

47. The commissioner of the United States in China, while he is a diplomatic officer by the law of nations, is also a judicial officer by treaty and by statute.—(*Ibid.*)

48. The provision of the new act, which contemplates the appointment only of an envoy extraordinary to China, is imperfect; for although the first minister of the United States in China held those two distinct commissions, yet a repetition of that fact at this moment would not be compatible with the diplomatic relations at present existing between the United States and China.—(*Ibid.*)

49. It was the practice of the Spanish crown, during the reigns of Charles I and his successors of the Austrian dynasty, to delegate to Spanish viceroys, governors, and captains general, the *jus legationis* as well in Europe as in Asia and America; and that delegation was recognized by the public law of Europe.—(7: 551.)

50. According to the public law of the monarchies of Europe, the authority of ministers, and perhaps of international commissioners, ex-

pires on the death, deposition, or abdication of the prince ; but not so as between the American republics, in which the executive power is permanent and continuous, without regard to the governing person, and there is no interruption of the authority or renewal of the credentials of their public ministers on a change of President for whatever cause, provided such President continues to represent and exercise the appointing power of the government.—(7: 582.)

51. The United States observe, as their rule of public law, to recognize governments *de facto*, and also governing persons *de facto*, without scrutiny of the question of legitimacy of origin or accession.—(*Ibid.*)

52. Hence, in this case, the Mexican commissioner, Mr. Salazar, being duly appointed by President Santa Anna, continued to be competent to act after the sequent accession of President Carrera, and his official agreement, signed then, if otherwise regular and complete, definitively establishes the line as respects the Mexican republic.—(*Ibid.*)

M I N T .

1. Transfers of money to the mint, by order of the President, for the purpose of coinage, in execution of the proviso to the 12th section of the act to regulate the deposits of public money, should be made by drafts in the same manner as from one deposit bank to another, remaining to the debit of the treasurer as money in the treasury.—(3: 144.)

N A V Y .

- I. GENERALLY.
 - II. ENLISTMENTS.
 - III. CONTRACTS WITH NAVY DEPARTMENT.
-

I.—GENERALLY.

1. Offenders are kept in the custody of that service, the peculiar laws of which they are accused of having violated, and by which they are to be tried.—(1 : 172.)

2. Boatswains, gunners, carpenters, and sailmakers were intended to be included in the resolutions of Congress of 6th January, 1814.—(1 : 195.)

3. The Secretary of the Navy has the contingent fund of the department entirely at his disposal, from which he may draw for the purpose of compensating any services rendered in any of the relations of his department which are of a contingent character.—(1 : 203.)

4. No sentence of a naval court-martial held within the United States can be carried into effect until confirmed by the commander of the fleet in which the offence occurred, or by the officer ordering the court.—(1 : 309.)

5. The numbering of naval commissions is not the act of the President and Senate, but of the Secretary of the Navy, to prevent questions of rank from arising among officers holding commissions of the same date.—(1 : 325.)

6. Whenever a change of the number of a commission is proposed, the person affected thereby ought to be heard as to the facts.—(*Ibid.*)

7. No such officer as brevet major of marines is recognized by act of Congress, nor can the President confer that rank under the act of 1814.—(1 : 352.)

8. The orders issued by the Secretaries of War and of the Navy are, in contemplation of law, the orders of the President of the United States. He has power to suspend, modify, or rescind, at pleasure, any order issued to the lieutenant colonel of the marine corps, or any other subordinate officer, except where a direct authority has been

given by Congress to an officer to perform any particular function.—(1: 380.)

9. The President's orders to the marine corps should pass through the Secretary of the Navy, except when that corps is incorporated with the army.—(*Ibid.*)

10. The act of 3d March, 1817, fixing the peace establishment of the marine corps, not having retained any majors in service, the brevets previously conferred were thereby made to cease with the termination of the lineal rank of majors by commission.—(1: 489.)

11. Since the act of 3d March, 1817, the only brevet rank of major which the President can confer is that of brevet major in the army of the United States.—(1: 578.)

12. If it shall be deemed inexpedient to confer upon a captain of marines the brevet rank of major in the army, then he is entitled—if entitled at all to promotion—to the brevet rank of lieutenant colonel in the marine corps.—(*Ibid.*)

13. A furlough granted to a sailing master, on condition that he should relinquish from that date his pay and emoluments as a naval officer, until further orders, is absolute, the condition being void in law.—(1: 592.)

14. The commandant of the marine corps possesses no power either to appoint or to dismiss a paymaster, quartermaster, or an inspector thereof, the act of July 11, 1788, contemplating nothing more than a matter occasional and transitory.—(2: 77.)

15. The power of appointing the paymaster, quartermaster, and adjutant and inspector to the marine corps, when stationed permanently on shore, in time of peace, belongs to the President and Senate.—(*Ibid.*)

16. A lieutenant colonel commanding marine corps cannot grant discharges to the marines before the expiration of their term of enlistment; and until Congress shall otherwise provide, such discharges can only be granted by the President of the United States, or in conformity to such regulations as he may think proper to prescribe.—(2: 355.)

17. Members of the Board of Navy Commissioners, while they act as such, retain their rank of post-captain in the navy; and may, while they continue members of the board, be employed by the government in separate and distinct duties, in their character of post-captains.—(2: 502.)

18. As no separate command is assigned to the several members of the board, in their character of post-captains, they cannot exercise

the authority which an officer of that rank possesses over the officers and men placed under their command when in actual service and afloat. They are only entitled to the rights and privileges that belong to an officer of the same grade when on shore, and not employed in any particular professional service.—(*Ibid.*)

19. The 13th article of the act of Congress “for the better government of the navy” refers only to officers commanding.—(3: 321.)

20. The costs of repairs and supplies furnished to certain vessels employed by the President in prosecuting the coast survey must fall upon the appropriation made by Congress for the survey of the coast.—(3: 479.)

21. Yet, if vessels are detailed from the navy, or from the revenue service, for temporary service in the coast survey, they may be repaired from funds provided by Congress for the branch of the public service to which such vessels properly belong —(*Ibid.*)

22. The Secretary of the Navy has authority to transfer the bonds in which a part of the navy pension fund is invested.—(3: 719.)

23. The act authorizing the construction of a dry-dock at Brooklyn containing no provision for the appointment of purchasing and disbursing agents, the authority to appoint them rests on the act of March 3, 1809, permitting the President, during the recess of the Senate, to appoint such temporary agent as may be needed.—(4: 353.)

24. But agents for the purchase and disbursement of supplies for the dry-dock at Brooklyn must be regarded, in contemplation of law, as permanent officers, to whose nomination the sanction of the Senate is necessary at its session next after the making of a temporary appointment.—(*Ibid.*)

25. Commanders of public vessels employed in the public service, whether armed or not, are not required to employ and pay branch pilots upon entering the ports and harbors of the United States.—(4: 532.)

26. The Secretary of the Navy has authority to arrange with Baring Brothers & Co., of London, for the payment of the drafts of disbursing officers attached to foreign squadrons.—(5: 218.)

27. The members of the Board of Commissioners of the Navy are still officers of the navy not below the rank of post-captains; and they are, whilst members of the board, entitled to all the honors, privileges, and powers of that rank, and subject to all the duties of it, except such duties as are inconsistent with their services on the board.—(5: 761.)

28. Congress is empowered by the Constitution to make rules for

the government and regulation of the land and naval forces of the United States.—(6: 10.)

29. Provision of statute exists by which the statute regulations of the army may, within certain limits, be altered by the Secretary of War, but there is no such provision in regard to the statute regulations of the navy.—(*Ibid.*)

30. The President and subordinate executive officers, whether military or civil, possess a limited power to establish regulations, provided these be in execution of, and supplemental to, the statutes and statute regulations; but not to repeal or contradict existing statutes or statute regulations, nor to make provisions of a legislative nature. Hence, the "System of Orders and Instructions" for the navy, issued by President Fillmore as "Executive of the United States," February 15, 1853, is without legal validity, and in derogation of the powers of Congress.—(*Ibid.*)

31. By successive acts of Congress, engineers and certain other officers of the navy are to be examined for promotion, and if one of them be absent on duty at the time of the examination of his class he shall, when examined and passed, take rank with the rest as if examined at the same time: *Held*, that retroactive pay does not as of course follow the ascription of retroactive rank.—(6: 68.)

32. The salary of the chief of the Bureau of Construction in the Navy Department as such is three thousand dollars, though three thousand five hundred dollars is allowable to a captain of the navy when he holds the office, the latter sum being provided in this case only as a limitation of his pay in the navy.—(6: 169.)

33. The time when the increased pay allowed by act of Congress to Lieutenant Gillis, as superintendent of the astronomical expedition to Chil , shall, cease not being definitely prescribed by act of Congress, depends on the discretion of the Secretary of the Navy.—(6: 220.)

34. After the sentence of a court-martial dismissing an officer has been approved and acted on by the President, it cannot be revised, except for suggestion of absolute nullity in the proceedings.—(6: 369.)

35. Objection to a naval court-martial because consisting of only nine members must be taken during the trial, as only involving the question of fact whether a greater number of officers could have been detailed without injury to the service, and not being a ground of nullity.—(*Ibid.*)

36. An officer of the navy becoming disabled from service, but not in the line of his duty, was permitted to retain his commission as an officer not under orders for actual service, and received, as such, half

pay during twenty-seven years of total disability: *Held*, that the sum thus allowed is the utmost which could be lawfully paid to the party, and that his administrator has no right to demand arrears of full pay in the case.—(6: 372.)

37. The incidental expenses attending the purchase, care, preservation, and transportation of provisions and clothing for the navy are not chargeable to the specific appropriations for provisions and clothing.—(6: 569.)

38. Under the act of the last Congress for promoting the efficiency of the navy, which provides for a board consisting of five captains, five commanders, and five lieutenants, to examine into the competency of the officers of the navy, and which further provides that no officer on said board shall examine into or report upon the efficiency of officers of a grade above them, the effect is to exclude any of such officers of the board from being present at the deliberations concerning officers their superior in grade.—(7: 282.)

39. The phrase “who served in the Pacific Ocean on the coast of California and Mexico,” in a statute of 1850, for the benefit of the navy and marine corps, having received a particular construction: *Held*, that the same words, afterwards repeated in a statute of 1853 on the same subject, must receive the same construction.—(7: 299.)

II.—ENLISTMENTS.

1. Enlistments for the naval service for “two years from the time when the ship shall last weigh anchor for sea” are regular for that term, although made before, and the persons enlisting serve awhile in fitting the vessel for sea.—(1: 169.)

2. The act of 1837, providing for enlisting boys for the naval service, and to extend the term for the enlistment of seamen, does not include the enlistment of marines.—(4: 89.)

3. The apprenticeship had in view by Congress relates only to those who may not be called on for military service on the land.—(*Ibid.*)

4. An alien can be enlisted in the naval or marine corps service of the United States, and is bound, the same as citizens, to serve for the term of his enlistment.—(4: 350.)

5. An infant is not bound by a contract of enlistment after he attains his full age, if he then repudiate it, even though it were entered into with the assent of his guardian for his benefit.—(*Ibid.*)

III.—CONTRACTS WITH NAVY DEPARTMENT.

1. All contracts and purchases entered into and made by the Navy Department must be entered into and made by or under the direction of the Secretary.—(2 : 257.)

2. Where the public exigencies do not require the immediate delivery of the articles, or performance of the service, it is necessary to advertise previously for proposals respecting the same.—(*Ibid.*)

3. Where immediate delivery is necessary to the wants of the public service, the article required must be obtained by open purchase, *i. e.*, at places where articles of the description wanted are usually bought and sold, and in the mode in which purchases are ordinarily made between individuals.—(*Ibid.*)

4. The Secretary of the Navy, however, under the act of May 1, 1820, may contract for clothing and subsistence of the navy; and when these supplies are to be furnished in places where there is no permanent agent, he must, of necessity, have the power to appoint a special agent to perform the duty.—(2 : 320.)

5. Under the resolution of Congress of March 3, 1849, respecting the claim of Benson, arising out of contracts with the Navy Department for the transportation of naval stores to and upon the Pacific, the Secretary has authority to pay and adjust it.—(5 : 126.)

6. The charter-party claim, though not previously made, if arising out of the contracts mentioned in the resolution, is embraced by it.—(*Ibid.*)

7. The amount which may be ascertained to be due is payable out of, and chargeable to, the appropriation for the current year for contingent expenses for transportation.—(*Ibid.*)

(See *Contract.*)

8. A provision of statute empowered the Secretary of the Navy to make a contract on time for the supply of American water-rotted hemp, but the power was not executed. A subsequent provision contained appropriation for the object, but required purchase in open market: *Held*, that the latter provision so far repealed the former, that a contract on time for this object, afterwards made by the Secretary of the Navy, was void for want of power.—(6 : 40.)

9. The provisions of the act of March 3, 1853, directing the Secretary of the Navy to complete and carry into execution a certain contract for the construction of a floating dock at San Francisco, are mandatory in their legal effect.—(6 : 551.)

10. The incidental expenses attending the purchase, care, preserva-

tion, and transportation of provisions and clothing for the navy are not chargeable to the specific appropriations for provisions and clothing.—(6 : 569.)

11. Construction of the act of February 8, 1855, in respect of the pay of officers of the navy promoted into vacancies occasioned by the retirement of their senior officers under that act.—(7 : 640.)

NAVY AGENT.

1. The office of navy agent not having been created by law, there has been no law defining its duties from which to determine whether the navy agent at New York has or has not rendered extra services.—(1 : 302.)

2. In general, it is the duty of navy agents to execute such instructions as they may from time to time receive from the executive departments.—(*Ibid.*)

3. The President has no authority, except in the recess of the Senate, to appoint any permanent agents for the purchase of supplies or for the disbursement of money for the navy other than those referred to in the act of 3d March, 1809.—(2 : 320.)

4. The Secretary of the Navy, however, under the act of 1st May, 1820, may contract for clothing and subsistence of the navy; and when these supplies are to be furnished in places where there is no permanent agent, he must, of necessity, have the power to appoint a special agent to perform the duty.—(*Ibid.*)

5. Where the agency is special and temporary, the compensation must be regulated by contract.—(*Ibid.*)

6. The navy agent at New York is not competent to become a purchaser at a sale made by himself on account of the government.—(4 : 351.)

7. The clerks in the office of the navy agent at Washington are not embraced by the provisions of the act of April 22, 1854, which augments the salaries of certain clerks of the executive departments.—(6 : 527.)

NEGROES.

1. Free colored persons are entitled to the benefits of the pre-emption act of 1841.—(4: 147.)

2. Free colored persons are distinguished from aliens, even where slavery exists, and are capable of all the rights of contract and property.—(*Ibid.*)

NEUTRALITY.¹

1. The arrest of the ship *Grange* within the capes of the Delaware was a seizure in neutral territory, and the attack of an enemy in neutral territory is absolutely unlawful. Restitution of the ship should be made.—(1: 32.)

2. The neutrality of the Delaware does not depend on any of the various distances claimed in the sea by different nations possessing the neighboring shore, for here the treaty of Paris and the *natural* law of nations will justify the United States in attaching to their coasts an extent into the sea beyond the reach of cannon shot.—(*Ibid.*)

3. Acts of hostility committed by American citizens against such as are in amity with us, being in violation of a treaty and against the public peace, are offences against the United States so far as they were committed within the territory or jurisdiction thereof, and, as such, are punishable by indictment in the district or circuit courts. Acts of the kind occurring in a foreign country are not within the cognizance of our courts.—(1: 57.)

4. It is the right of an enemy to purchase goods and instruments of war of a neutral nation, but it may be denied by a law passed for that purpose; but if the object of the law were to impede one belligerent power and to favor the other, such conduct would be a breach of neutrality.—(1: 61.)

5. A citizen of a neutral State who, for hire, serves on a neutral ship employed in contraband commerce with either of the belligerent powers, is not liable to any prosecution for so doing by the municipal laws of his own State; nor can he be punished personally by that belligerent nation to whose detriment the trade would operate. But, in

¹ Under the 3d section of the act of April 20, 1818, (3 Stats. at Large, 443,) it is not necessary that the vessel should be armed, or in a condition to commit hostilities, on leaving the United States, in order to convict one indicted for being concerned in fitting out a vessel with intent that she should be employed, &c. It is sufficient if the defendant was knowingly concerned in fitting out or arming the vessel, with intent, &c., though that intent should appear to have been defeated after the vessel sailed.—*United States vs. Quincy*, 6 Pet., 445; see, also, *Gelston vs. Hoyt*, 3 Wheat., 246; *The Estrella*, 4 Wheat., 298; *Moodie vs. The Alfred*, 3 Dal., 307.

such cases, the contraband goods and vessel may be seized and confiscated.—(*Ibid.*)

6. It is not illegal for a shipowner to sell his vessel and cargo to a citizen of Buenos Ayeres, though it would be otherwise if such vessel was furnished with intent to serve a foreign State in committing hostilities with another with which we are at peace.—(1: 190.)

7. A vessel fitted out at Savannah with armament, munitions, and sea stores, and afterwards found with a commission from the republic of Venezuela to cruise against the subjects of the King of Spain; and having sailed on such a cruise, but under another name, and is seized at Savannah on the charge of having been fitted out in a port of the United States to cruise against the King of Spain, is a fit case for adjudication, and not one calling for the interference of the government.—(1: 233.)

8. Columbian vessels are entitled, under the treaty with that republic, to make repairs in our ports when forced into them by stress of weather; but they cannot enlist recruits there either from among our citizens or foreigners, except such as may be transiently within the United States.—(2: 4.)

9. It is not a breach of neutrality to permit a Spanish merchantman, captured as a prize by a Mexican war vessel, and brought by the latter into an American port unseaworthy, to be repaired and put in a condition to be carried home to a port of the captor for adjudication.—(2: 86.)

10. There is high authority for the position that a prize may be brought into a neutral port and sold without violating the law of nations concerning neutrality; but as there is no doubt of the authority of the neutral sovereign to prohibit such sale, and as the strongest considerations of expediency and safety urge him to do so, the better course is clearly to prohibit them.—(*Ibid.*)

11. It would be a breach of neutrality to permit a neutral port to be made a cruising station for a belligerent, or a depot for his spoils and prisoners.—(*Ibid.*)

12. The building of two schooners of war in New York for the Mexican government, and being about to be furnished with guns and the usual military equipments, is clearly within the 3d section of the act of 1818.—(3: 738.)

13. These vessels having been built expressly for the service of Mexico, which is waging war against Texas, the persons are liable to the penalties of the act and the vessels to forfeiture.—(*Ibid.*)

14. The policy of this country is, and ever has been, perfect neutrality and non-interference in the quarrels of other nations.—(*Ibid.*)

15. If such vessels, however, were not delivered, nor the property changed, within our jurisdiction, but were sent out of the port under control of our own citizens unarmed, and every possible precaution was taken to insure pacific conduct on the high seas, the doctrine above laid down, though reaffirmed, does not as fully apply to the case now presented as was supposed from the first statement of the case.—(3: 741.)

16. The act of 1818, like that of 1794, was intended to secure, beyond all risk of violation, the neutral and pacific policy which they consecrate as our fundamental law.—(*Ibid.*)

17. The enlistment of seamen or others for marine service on Mexican steamers in the port of New York, they not being Mexicans transiently within the United States, is a clear violation of the 2d section of the act of 1818, to preserve and vindicate the neutrality of the United States, and the persons enlisted, as well as the officers enlisting them, are liable to the penalties thereby incurred.—(4: 336.)

18. The repair of Mexican war steamers in the port of New York, together with the augmenting of their force by adding to the number of their guns, or by changing those originally on board for those of larger calibre, or by the addition of any equipment solely applicable to war, is a violation of the 5th section of the same act.—(*Ibid.*)

19. But the repair of their bottoms, copper, &c., does not constitute any increase or augmentation of force within the meaning of the act, and the steamers themselves are not subject to seizure by any judicial process under it.—(*Ibid.*)

20. Commanders and officers of vessels of other nations found to have violated the statute in question are amenable to the criminal jurisdiction of our courts, and may be prosecuted.—(*Ibid.*)

21. The purchase and fitting out a war steamer by the German government in the port of New York whilst a state of war exists between that government and Denmark, and which is adapted for cruising and committing hostilities against the property or subjects of the latter, is contrary to the provisions of the 3d section of the act of 20th April, 1818.—(5: 92.)

22. The act makes no difference between the degrees of intent with which a vessel shall be fitted out; any intent to commit hostilities against a nation with which the nation fitting her out is at war is within its prohibitions.—(*Ibid.*)

23. According to the law of nations, neutrals have the right to

purchase during war the property of belligerents, whether ships or anything else ; and any regulation of a particular State which contravenes this doctrine is against public law, and in mere derogation of the sovereign authority of all other independent States.—(6: 638.)

24. A citizen of the United States may at this time lawfully purchase a merchant ship of either of the belligerents, Turkey, Russia, Great Britain, France, or Sardinia ; if purchased *bona fide*, such ship becomes American property, and entitled as such to the protection and to the flag of the United States ; and although she cannot take out a register by our law, yet that is because she is foreign built, not because she is belligerent built ; and she can obtain a register by special act of Congress.—(*Ibid.*)

25. Belligerent ships-of-war, privateers, and the prizes of either, are entitled, on the score of humanity, to temporary refuge in neutral waters from casualties of the sea and land.—7: 122.)

26. By the law of nations, belligerent ships-of-war, with their prizes, enjoy asylum in neutral ports for the purpose of obtaining supplies or undergoing repairs, according to the discretion of the neutral sovereign, who may refuse the asylum absolutely, or grant it under such conditions of duration, place, and other circumstances, as he shall see fit, provided that he must be strictly impartial in this respect towards all the belligerent powers.—(*Ibid.*)

27. Where the neutral state has not signified its determination to refuse the privilege of asylum to belligerent ships-of-war, privateers, or their prizes, either belligerent has a right to assume its existence, and enter upon its enjoyment, subject to such regulations and limitations as the neutral state may please to prescribe for its own security.—(*Ibid.*)

28. The United States have not by treaty with any of the present belligerents bound themselves to accord asylum to either ; but neither have the United States given notice that they will not do it ; and of course our ports are open, for lawful purposes, to the ships-of-war of either Great Britain, France, Russia, Turkey, or Sardinia.—(*Ibid.*)

29. A foreign ship-of-war, or any prize of hers in command of a public officer, possesses, in the ports of the United States, the rights of extritoriality, and is not subject to the local jurisdiction.—(*Ibid.*)

30. A prisoner of war, on board a foreign man-of-war, or her prize, cannot be released by habeas corpus issuing from courts either of the United States or of a particular State. But, if such prisoner of war be taken on shore, he becomes subject to the local jurisdiction or not,

according as it may be agreed between the political authorities of the belligerent and the neutral power.—(*Ibid.*)

31. It is a settled principle of the law of nations that no belligerent can rightfully make use of the territory of a neutral State for belligerent purposes without the consent of the neutral government.—(7: 367.)

32. The undertaking of a belligerent to enlist troops of land or sea in a neutral State, without the previous consent of the latter, is a hostile attack on its national sovereignty.—(*Ibid.*)

33. A neutral State may, if it please, permit or grant to belligerents the liberty to raise troops of land or sea within its territory; but for the neutral State to allow or concede this liberty to one belligerent, and not to all, would be an act of manifest belligerent partiality and a palpable breach of neutrality.—(*Ibid.*)

34. The United States constantly refuse this liberty to all belligerents alike, with impartial justice; and that prohibition is made known to the world by a permanent act of Congress.—(*Ibid.*)

35. Great Britain, in attempting, by the agency of her military and civil authorities in the British North American provinces, and her diplomatic and consular functionaries in the United States, to raise troops here, committed an act of usurpation against the sovereign rights of the United States.—(*Ibid.*)

36. All persons engaged in such undertaking to raise troops in the United States for the military service of Great Britain, whether citizens or foreigners, individuals or officers, unless protected by diplomatic privilege, are indictable as malefactors by statute.—(*Ibid.*)

37. Foreign consuls are not exempted, either by treaty or the law of nations, from the penal effect of the statute.—(*Ibid.*)

38. In case of indictment of any such consul or other official person, his conviction of the misdemeanor, or his escape by reason of arranged instructions or contrivances to evade the operation of the statute, is primarily a matter of domestic administration, altogether subordinate to the consideration of the national insult or injury to this government involved in the fact of a foreign government instructing its officers to abuse, for unlawful purposes, the privileges which they happen to enjoy in the United States.—(*Ibid.*)

39. The acts of Congress prohibiting foreign enlistments is a matter of domestic or municipal right, as to which foreign governments have no right to inquire, the international offence being independent of the question of the existence of a prohibitory act of Congress.—(*Ibid.*)

40. A foreign minister who engages in the enlistment of troops here for his government, is subject to be summarily expelled from the country; or, after demand of recall, dismissed by the President.—(*Ibid.*)

41. Miscellaneous expenditures, incurred by order of the State Department for the purpose of preserving the neutrality of the United States, are chargeable to the funds of that department.—(7: 398.)

42. The doctrine of the right of neutrals to purchase the ships of belligerents reaffirmed.—(7: 538.)

43. The Secretary of the Treasury may regulate in such case the authentication of the bill of sale, which is the highest evidence of the change of property.—(*Ibid.*)

OFFICE.

1. The provisions of the acts of 3d March, 1839, 23d August, 1842, and 30th September, 1850, do not forbid a person from holding two compatible offices at the same time. They were intended to prevent arbitrary extra allowances in each particular case; but do not apply to distinct employments with salaries affixed to each by law, or by regulations.—(5: 765.)

(See *Officers, appointment.*)

2. *Semble*, that a person may hold two distinct offices under the government and receive the salaries of both.—(6: 80.)

3. The marshal of the United States for the southern district of Florida cannot at the same time hold the office of commercial agent of France.—(6: 409.)

Commissioners, appointed for the performance of a special duty in virtue of a statute, cannot continue to act as such after such statute shall have expired by its own limitation.—(7: 448.)

(See *Appointment.*)

OFFICERS.

1. It is not consistent with the relation between the government and its officers for the former to make itself a creditor of the latter without their consent, and to detain their salaries in the discharge of debts so acquired.—(1: 676.)

2. The office of Paymaster General was within the policy of the act of May 15, 1820, and is not affected by the subsequent act of the 2d of March, 1821.—(2: 27.)

3. A paymaster having been reported by the Paymaster General to have failed in making quarterly reports according to the act of 31st of January, 1823, and having been dismissed from office by an order from the office of the Adjutant General, purporting to have been issued by order of the President, and his place having been filled by another, is effectually and legally dismissed from the army as paymaster, although the President has not issued any order of dismissal under his sign manual.—(2: 67.)

4. The proviso to the 3d section of the act of 31st of January, 1823, concerning restorations in certain cases, does not reach the case of an officer who has been actually dismissed, but is confined to those who, being in default, shall, before their dismissal, account therefor to the satisfaction of the President.—(*Ibid.*)

5. The appointment of a navy agent during the recess of the Senate, made in the case of a vacancy occurring during the recess, is in the exercise of the constitutional power of the President, and not by force of the act of 3d of March, 1809; and the limitation of such appointment is to the end of the succeeding session of Congress, unless it be sooner determined by the acceptance of a new commission under an appointment made by and with the advice and consent of the Senate.—(2: 333.)

6. Where a new commission is accepted it supersedes the old one; and the four years, prescribed by law as the official term of the appointee, must commence to run from its date.—(*Ibid.*)

7. The bonds taken under the first commission cease to have effect when the commission terminates.—(*Ibid.*)

8. A commission issued by the President during a recess of the Senate continues until the end of the next session of Congress, unless

sooner determined by the President, even though the individual commissioned shall have been meanwhile nominated to the Senate and the nomination rejected.—(2: 336.)

9. The acceptance of a new commission, after confirmation by the Senate of an appointment made during a recess, is a supersedeas of that granted on the original appointment.—(*Ibid.*)

10. A resignation, to the President, of a director of the Bank of the United States is an inchoate act until the same has been accepted expressly or presumptively by the appointment of another.—(2: 406.)

11. An inspector of customs continues in office after the death, resignation, or removal of the collector by whom he was appointed, until a successor shall be qualified to act.—(2: 410.)

12. When office is held during the pleasure of any designated officer, it is at the pleasure of the officer, and not of the individual; and to determine that office, otherwise than by the act of the immediate incumbent, there must be some official act indicative of the will of the officer at whose pleasure it is held. If he ceases his official functions without having done any act indicative of his will, his appointee must necessarily hold over until a successor is appointed and vested with a like discretion.—(*Ibid.*)

13. The adjutant general of the army, under the act of March 2, 1821, may hold at the same time the office of adjutant general, with the rank of colonel of cavalry, and that of major of the second regiment of artillery.—(2: 644.)

14. Naval and administrative officers generally, in contemplation of law, hold over until their successors are duly appointed and qualified.—(2: 713.)

15. The rule is otherwise with officers elective and judicial; for such cannot exercise their functions after the expiration of the terms of service for which they were elected or appointed.—(*Ibid.*)

16. Where an officer appointed temporarily by the President is afterwards appointed by nomination, with consent of the Senate, his new appointment commences from the period of any official act, indicating his acceptance of the office, whether it be a direct communication to that effect, or his taking the oath of office, or his giving a bond.—(3: 577.)

17. Clerks of courts are not responsible to the treasury for fees, which, after using due diligence, they have failed to collect.—(3: 627.)

18. By the sixth section of the act of June 30, 1834, the staff officers of the marine corps are required to be taken from the captains or subalterns of the corps; wherefore only those are qualified to act as

such staff officers who have, at the same time, a lineal rank as captains or subalterns.—(4 : 340.)

19. A captain or lieutenant of the marine corps holding a staff appointment is still such captain or lieutenant, and entitled to promotion in the line as though such staff appointment had never been conferred. His acceptance in the one does not produce any vacancy in the other.—(4 : 421.)

20. All collections of objects of natural history and the like, and all field-notes or other like local information, taken or obtained by any public officer, civil or military, *in the line of his duty*, belong to the government.—(6 : 599.)

21. But officers of the government, civil or military, may lawfully make collections and take notes for their own use, provided the same be done without neglect of public duty or expense to the government, and provided, also, that it be done without violation of superior order in their respective departments.—(*Ibid.*)

22. Public officers are indictable at common law for acts of malfeasance in office committed in the District of Columbia.—(*Ibid.*)

. OFF-SET.

1. Set-off differs from a lien, inasmuch as the former belongs exclusively to the remedy, and is merely a right to insist, if the party think proper to do so, when sued by his creditor, on a counter demand, which can only be enforced through the medium of judicial proceedings, whilst the latter is, in effect, a substitute for a suit.—(2: 677.)

(See *Account*.)

2. The balance of \$95,588 63, due the United States from the late territorial government of Florida, ought not to be set-off in the extinguishment of the appropriation of \$75,000 made by Congress on the 27th of February, 1851, for reimbursing to the State of Florida moneys advanced for supplies and service of the local troops called into service during the year 1849.—(5: 455.)

3. By compact between the United States and the State of Wisconsin, when the latter was admitted into the Union, it was agreed that the United States would pay to the State five per cent. of the net proceeds of the sale of public lands within the same, for the use of its schools, provided that certain liabilities of the Territory of Wisconsin on account of lands granted by the United States for canals therein shall be paid and discharged by the State: *Held*, that the United States can make a set-off of the five per cent. school fund to pay the canal debt, because the former is a special trust fund; but that the United States may retain the money in trust itself until the State discharges its obligation in the other respect to the United States.—(6: 432.)

PARDON.

1. The district attorney may assure a counterfeiter of a pardon who shall disclose his accomplices and produce the plates and counterfeited paper. A mere disclosure seems not to be enough.—(1: 77.)

2. The President may mitigate a sentence of death pronounced by a naval court-martial.—(1: 327.)

3. The power of absolute pardon given to the President by the Constitution includes the power of issuing a conditional one. Yet there is great danger that conditional pardons may result as absolute ones from the difficulty of enforcing conditions after the offender shall have been released from the custody of the law.—(1: 341.)

4. The condition, in order to be effectual for any purpose, must be such that a resort need not be had to the power of arrest in the original case.—(*Ibid.*)

5. Pardons may be issued before conviction. They presuppose an offence, and nothing more; and there is neither any constitutional nor legal provision which requires them to be preceded by a trial, a verdict, or a sentence. They may be founded on a confession in writing.—(*Ibid.*)

6. Where the accused, who has been convicted of piracy, and the verdict sustained by the Supreme Court, sets forth in his petition for pardon an *ex parte* statement of facts which, if true, would show him to have been improperly convicted, the President is neither authorized to inquire into the truth of the alleged facts, nor to grant a pardon, on the assumption that they are true.—(1: 359.)

7. The President may grant a conditional pardon, provided the condition be compatible with the genius of our Constitution and laws.—(1: 482.)

8. Where an assistant postmaster was convicted of taking the property of another, and it appears that he has become reformed, a pardon is recommended.—(2: 249.)

9. It is generally inexpedient for the President to grant a pardon before the applicant is tried. Where an applicant was indicted for murder, the fact that his trial cannot take place at the first term of court to be held after the indictment was found is not sufficient ground for a pardon.—(2: 275.)

10. The power of the Executive to grant reprieves and pardons ex-

tends to the remission of fines, penalties, and forfeitures, and costs in criminal cases, and may be exercised in degrees at different times, at the discretion of the President.—(3 : 418.)

11. And the same power is possessed by the President over a judgment, after security for its payment shall have been given as before.—(*Ibid.*)

12. And to fines imposed upon individuals for conduct adjudged to be contempts of the circuit courts.—(3 : 622.)

13. Jenkins, a slave, imprisoned under a sentence of the circuit court for the county of Washington, in the District of Columbia, for a second offence against the act of March 2, 1831, is a proper subject for the exercise of the pardoning power.—(4 : 237.)

14. The act includes “every person,” and therefore makes no distinction between slaves and free persons who may offend against its provisions.—(*Ibid.*)

15. The pardoning power authorizes the President to remit a fine imposed upon a citizen for contempt in neglecting to serve as a juror.—(4 : 317.)

16. There being no decisive proof of the guilt of the convict, concurrent representations of various and highly respectable persons as to his innocence may properly be taken into consideration in determining the propriety of clemency, and, if satisfactory, will abundantly justify the exercise of the pardoning power.—(4 : 325.)

17. In mitigating the sentence of a naval court-martial, the President may substitute a suspension for a term of years without pay for an absolute dismissal from the service, as suspension is but an inferior degree of the same punishment.—(4 : 433.)

18. But the power does not extend to the substitution of another punishment for that decreed by the court. Therefore the President cannot suspend the pay of an officer under sentence of court-martial whose pay was not suspended by the court.—(4 : 444—5 : 43.)

19. The pardoning power, except in the single instance in which it was withheld by the constitution, is co-extensive with the punishing power, and applies as well to punishments imposed for contempt of the process of the United States as for the violation of any other law.—(4 : 458.)

20. As there is reason to doubt the guilt of the Indian See-see-sah-ma, who is under sentence of death for murder, his case presents a very proper occasion for the exercise of executive clemency, either by general pardon or by a commutation of the punishment to which he has been sentenced.—(5 : 368.)

21. It is not competent for the President, in the exercise of the pardoning power, to remit pecuniary penalties attached to an offence, unless those penalties accrue to the United States.—(5 : 532.)

22. The punishment in the District of Columbia for the unlawful transportation of slaves, by the laws of Maryland applicable to the District, is by fine, which the statute appropriates, and cannot be remitted by the President.—(*Ibid.*)

23. The President, in the exercise of the pardoning power vested in him by the Constitution, may remit penalties and fines adjudged in the circuit court of the District of Columbia, against parties convicted of aiding the escape of slaves from their masters, and discharge them from imprisonment; or he may merely discharge them from imprisonment without remitting the fines.—(5 : 579.)

24. The consideration of the application for pardon postponed until after the trial of petitioner.—(5 : 687.)

25. The President of the United States has the constitutional power to pardon as well before trial and conviction as afterwards; but it is a power only to be exercised with reserve, and for exceptional considerations.—(6 : 20.)

26. A general commanding the forces of the United States in the field does not possess power to commute the sentence of cashiering pronounced by a court-martial, but only the power to execute the sentence, or to suspend it and take the direction of the President.—(6 : 123.)

27. The appointment of an officer of the marine corps to a new commission is constructive pardon of a previous sentence pronounced but not yet executed.—(*Ibid.*)

28. Vessels propelled by steam, and employed in the transportation of passengers by sea between Panama and San Francisco, are within the provision of the acts of Congress regulating the transportation of passengers in merchant vessels.—(6 : 393)

29. The pardoning power of the President extends to all cases of penalties and forfeitures, as well as other punishment, provided by those acts.—(*Ibid.*)

30. In certain cases under those acts forfeitures may be remitted by the Secretary of the Treasury.—(*Ibid.*)

31. After return of execution on scire facias against the surety of an absconding criminal charged with violation of acts of Congress, the only mode of relieving the surety is by exercise of the pardoning power of the President.—(6 : 408.)

32. The governor of the Territory of Utah has power to reprieve

but not to pardon, persons indicted and convicted for crime against the United States.—(6: 430.)

33. In cases of mere forfeiture or other penalties accruing to the treasury under the acts of Congress relative to the transportation of passengers, the Secretary of the Treasury may remit, as in similar cases arising under the revenue laws.—(6: 488.)

34. This does not exclude the general power of the President to pardon; and where, under the same passenger laws, personal punishment is inflicted, the case can be reached only through the pardoning power of the President.—(*Ibid.*)

35. Whether the President can lawfully discharge a prisoner confined for non-payment of a penalty accruing as indemnification to the individual injured by the prisoner's act, *dubitat*.—(6: 615.)

36. The order of the Secretary of the Navy to an officer, while under sentence of suspension, to attend a court-martial as a witness, does not operate as a constructive pardon.—(6: 714.)

37. In the early period of the government there was irregularity in the practice regarding capital sentences under acts of Congress—that is, upon the point whether the convict should be executed on a warrant of the court by which he was tried, or of the President.—(7: 561.)

38. But in the administration of President Jackson it was determined and made known by circular from the office of the Attorney General, in all cases to leave the execution of the sentence of the law to the discretion of the court, in confidence that the courts will give a reasonable time for the interposition of executive clemency in cases where it ought to be interposed.—(*Ibid.*)

39. The President of the United States alone has the power to pardon offences committed in a Territory in violation of acts of Congress.—(*Ibid.*)

PARTNERSHIP.

1. It is a settled rule that the assets of a partnership are not to be applied to the payment of the private debts of either partner until after the partnership debts are discharged; and this is more emphatically the case where the private debts were contracted after the dissolution.—(3: 287.)

PATENTS FOR INVENTIONS.

1. The specification for an invention should be so explained that other persons besides the author may understand and use it.—(1: 64.)

2. Patents for inventions are confined to citizens of the United States.—(1: 110.)

3. Patents cannot be withheld on moral grounds, relating to the conduct of the applicant.—(1: 170.)

4. Copies of specifications of a patented article may be furnished to any applicant.—(1: 171.)

5. No patent for an invention can properly issue unless the applicant makes oath that such invention hath not, to the best of his knowledge, been known or used in this or any foreign country; and if it turn out that any patent shall have been issued for an invention previously known and used, the same shall be utterly void.—(1: 339.)

6. A defendant, when sued by a patentee for an alleged violation of his patent right, has a right to a copy of the specifications for use on the trial, in order to enable him to show, if he can, that the specification does not contain the whole truth relative to the discovery, or that it contains more than is necessary to the effect desired; and as the law gives this privilege, it by implication gives the right of using the specification openly and publicly in court.—(1: 376.)

7. The established forms of jury trials in other cases cannot be departed from in patent cases, even though patentees may desire secrecy.—(*Ibid.*)

8. It is not the duty of officers of the Patent Office to decide upon the legal effect of patents issued in conformity to the laws, nor to inform patentees of their rights.—1: 575.)

9. Patentees, their assigns, and persons sued for violation of patent rights, should, upon demand and payment of twenty-five cents per folio for the copy, be furnished with copies of specifications. But this privilege cannot be extended to citizens indiscriminately.—(1: 718.)

10. It may be questionable whether the substitution of one material for another be an invention within the sense of the patent law.—(2: 52.)

11. In cases of doubt, however, it will be congenial with the policy

of the law to issue a patent to the petitioner, thereby giving him an opportunity of trying the validity of his right.—(*Ibid.*)

12. It is not advisable to issue patents for newly invented medicines, to bear the name of other popular medicines existing. In this case there can be no fair purpose for assuming a name so well known as “Anderson’s cough drops.” *Sic utere tuo ut alienam non lædas.*—(2: 109.)

13. The department acts ministerially, rather than judicially, in granting patents for useful inventions.—(2: 455.)

14. Where patents for inventions have been issued, and afterwards cancelled by petition of the patentees and others, bearing the same date, comprising additional improvements, issued in their favor, others may afterwards issue for the additional improvements alone, taking date from the time when the second patents were issued.—(*Ibid.*)

15. The rights secured by letters-patent are the subjects of judicial, not of executive decision. When all the laws and forms have been complied with, patents issue without inquiry as to the precise rights they confer.—(*Ibid.*)

16. Patents may be surrendered by parties to whom they were granted, and new ones taken, including additional improvements.—(*Ibid.*)

17. Copies of papers belonging to the Patent office may not be made by individuals, but should be made by the proper officers, and fees received therefor and paid into the treasury.—(*Ibid.*)

18. No more clerks in the Patent Office can be employed and paid by the Secretary than are particularly authorized by the acts of Congress; nor can any higher allowance be made to them than is authorized by the act of 20th April, 1818.—(*Ibid.*)

19. The party applying for a patent must furnish satisfactory evidence that he is a citizen of the United States; or if an alien, that he has resided in the United States for two years.—(2: 511.)

20. It is not proper to grant a patent on a joint invention to one of the inventors upon the assignment of the other; but all who are concerned in the invention should join in the petition.¹—(2: 571.)

21. As to what evidence will be deemed sufficient to authorize one man to act as the attorney of another, it is the subject of a rule that must be fixed by the department.—(*Ibid.*)

22. An assignee of a patent for an invention cannot surrender it and take to himself a new one on new and additional specifications, except upon proof that the new specifications were invented by the

By act March 3, 1837, section 6, patents may issue to the assignee of an inventor.

patentee, and were intended originally to have been patented by him, and that the omission was a mistake.—(2: 572.)

23. The oath of the inventor is requisite, for the act of Congress requires it; the mere statement of what are called corrected specifications by the patentee, or his assignee, is not sufficient.—(*Ibid.*)

24. Unless there be some error in the specification arising from inadvertency, accident, or mistake, and without any fraudulent or deceptive intention, the patentee cannot surrender a patent which includes several distinct improvements, and take out several new ones.—(3: 165.)

25. Extension of patents for useful inventions may be granted to the legal representatives of patentees, where such patentees, if living, would be entitled thereto.—(3: 446.)

26. Verifications and depositions in foreign countries, to be made under the provisions of the sixth section of the act of July 4, 1836, before patents can issue, should not be made before consuls, but before competent magistrates of the country where they shall be taken, and authenticated by the consul.—(3: 532.)

27. Any abrogation of oaths in the patent laws of England will not affect the question here; all conditions requisite to a patent in this country must be complied with according to the laws of Congress.—(*Ibid.*)

28. Applications for extensions of patents for inventions must be made to the Commissioner a sufficient time before the expiration of the term for which they were issued, to enable him to give the notice contemplated by the act of July 4, 1836, to the public in that section of the country most interested adversely to them.—(3: 594.)

29. Repayment of patent fees can only be made under the circumstances and in the manner, and to the persons provided by law; and that justifies no repayment to any other than the party in whose name the deposit has been made, or to his duly constituted attorney.—(4: 268.)

30. The date of a patent issued for an invention may be corrected to correspond with a patent granted by the king of Bavaria, where the mistake in that already issued arose from no fraudulent or deceptive intention.—(4: 335.)

31. Patents cannot issue to inventors and assignees of a partial interest jointly, but may issue to assignees of the whole interest.—(4: 399.)

32. No provision has been made for the issue of a patent for a part

of an invention to the inventor, and for the other part to his assignee.—(*Ibid.*)

33. The fact that anything for which a patent is sought has been before discovered and used in a foreign country, though not patented nor described in any printed publication, is no reason for withholding a patent.—(5: 18.)

34. The authority vested in the Commissioner of Patents to issue patents exists in full force in each case, for examination and final decision, until the patent shall have been actually issued.—(5: 220.)

35. The Commissioner, therefore, may permit one of two competing applicants for a patent to withdraw and refile his application after he has express opinion favorable to the priority of the other; and such intervening opinion or decision is no bar to the issue of a patent on the new application, if, upon full examination of the whole subject, he considers the applicant entitled to it.—(*Ibid.*)

36. The authority of the Secretary of the Interior to supervise the Patent Office comprehends the power to appoint such temporary clerks to be employed therein as shall be authorized by law, and to cause their salaries to be paid out of any money appropriated for that purpose.—(5: 283.)

37. The Commissioner of the Patent Office, therefore, is subordinate to, and subject to the control of the Secretary of the Interior, in the appointment and payment of such clerks; and his authority is the same, whether the money disbursed be appropriated from fees or from the agricultural or any other fund —(*Ibid.*)

38. The necessary cases, for the proper exhibition and arrangement of models and deposits intended for the patent office, may be procured either by a contract for the whole or of parts, or by purchases.—(5: 663.)

39. The "Patent Fund" is expressly appropriated by law for payment of the salaries of officers and clerks, and other expenses of the Patent office, and contracts for necessary expenses may be paid out of that fund without other appropriation.—(*Ibid.*)

40. Cases of interfering applications for patents for useful inventions must be left in the first instance to arbitrators.—(5: 701.)

41. Where an applicant is entitled to two patents for useful inventions in respect to the same machine on two different specifications, made at different times, and requests the last patent to be antedated to correspond with the date of the first one: *Held*, that such antedating would be illegal and improper.—(5: 722.)

42. Where an American citizen had obtained a patent for a fire

hearth to produce fresh water from the ocean on board of public ships, and also a patent for the same invention in England, and before it was brought into practical use in this country one of the articles so patented in England was captured on board a British vessel by the *Enterprise*: *Held*, that no right to use such invention on American vessels accrued from the capture.—(5 : 725.)

43. A caveator is only entitled to return of two-thirds of the fee paid by him into the Patent Office, in case of his acquiescence in the objections of the Commissioner.—(6 : 36.)

44. An act of Congress allowed appeals in certain cases from the decision of the chief judge of the circuit court of the District of Columbia; and a subsequent act, without taking away that power, extended the right of appeal so as to lie to either of the assistant judges: *Held*, that an order of the Commissioner requiring, on account of the infirmity of the chief judge, that appeals be admitted only to the assistant judges, is contrary to law, and without effective operation.—(6 : 38.)

45. The salaries of all clerks in the Patent Office, like its other expenditures, are to be defrayed out of the patent fund.—(6 : 319.)

46. The Patent Office made a deposit with S. W. C., bankers in Washington, subject to the draft of D. J. B., an agent of the office in London, upon the certificate of which B. B. C., bankers in London, advanced money to D. J. B., after which, and before repayment of the advances made by B. B. C., S. W. C. suspended payment: *Held*, that the Patent Office must indemnify B. B. C.—(7 : 64.)

47. It is a frequent error on the part of the patentees of new inventions, arising either intentionally or from want of logical precision of thought, to employ language of claim generic instead of specific, and so of undue comprehension; which improper generality of claim is the origin of many of the questions of interference, and will be reduced to its proper specific limits by judicial analysis and exposition.—(7 : 133.)

48. The patent of Cadwallader Evans would seem in terms to embrace any use of fusible alloys in connexion with infusible rods to open the valve or move the indicator of a steam-engine; but cannot cover the use of such alloy, and the particular machinery for using it, previously suggested by Professor Bache, and made public in a report of the Franklin Institute.—(*Ibid.*)

49. Every applicant for a patent has the right to withdraw his application, and demand the restoration of two-thirds of the thirty dollars duty-money at any period of time, at least, anterior to the making oath anew and proceeding upon the ulterior stages of inquiry after adverse report by the Commissioner.—(7 : 390.)

PAYMENT.

1. A payment to a person acting under a power of attorney from one of several executors is valid, co-executors being regarded in law as an individual person, and the act of one as the act of all.—(2: 66.)

2. Payment of the claims of the citizens of Georgia, under the Creek treaty of 1821, and the law concerning them, passed 30th June, 1834, may be made by the President to the State of Georgia for the use of the claimants.—(2: 691)

3. The Secretary of the Navy may pay the amount of the judgment recovered against Commodore Elliot, for acts done in the performance of his official duty, if there are funds within his control properly applicable to such an object.—(3: 306.)

4. Payments directed by Congress to be made to M. and T. should be made by the Secretary of the Treasury to them or their constituted attorney, notwithstanding the interposition of claims by third persons grounded on assignments, insolvent, or other proceedings, anterior to the passage of the act directing the payment.—(3: 533.)

5. Accounting officers cannot, in the innumerable cases in which Congress directs specific sums to be paid to individuals, examine and settle previously existing claims and credits against such individuals.—(*Ibid.*)

6. The first part of the act of 4th February, 1819, entitled "An act to authorize the payment in certain cases on account of treasury notes which have been lost or destroyed," applies to notes issued from 1837 to 1841, inclusive.—(3: 634.)

7. A treasury warrant regularly issued is legally available to the true owner at all times, and he may at all times claim the benefit of it; and the sum really due to the real creditor may be paid without the issue of any new requisition.—(4: 298.)

8. A requisition and warrant issued in favor of Jeremiah Smith, jr., are not discharged by payment wrongfully made to another person.—(*Ibid.*)

9. Where a warrant has been properly issued and paid by mistake to a wrong person, no new requisition can be issued to cover the claim. A requisition having been already issued, and upon it a warrant, which is in legal contemplation yet outstanding, the proper course to

be pursued to adjust the matter is to issue a duplicate warrant reciting the facts concerning the disposition of the first, or to withdraw the first and issue another, to be treated as if presented the first time for payment.—(4 : 306.)

10. The person entitled to payment may be satisfied from the appropriation out of which his warrant was originally payable, the same as if the mistake had not occurred. He is not bound to await a new appropriation by Congress.—(*Ibid.*)

11. The treasurer having paid the warrant wrongfully through mistake is chargeable with such mistake.—(*Ibid.*)

12. Certificates issued under the third section of the act of 23d August, 1842, to provide for the satisfaction of claims under the fourteenth and nineteenth articles of the treaty of Dancing Rabbit creek, when held in good faith by a pre-emptor, are receivable in payment for pre-emption lands.—(4 : 472.)

13. A Cherokee reservee, under treaty of 1835, in whose favor the commissioners appointed to adjudicate claims made an award, but to whom they delivered no certificate, is, nevertheless, entitled to payment.—(4 : 500.)

14. As a general rule the certificate of the commissioners, indicating the amount due the claimant, is the proper evidence of the fact to be produced to the accounting officers, and upon which they are to make payment ; yet the rule is not entirely inflexible.—(*Ibid.*)

15. And claimants, under the 17th article of said treaty, (1835,) in whose favor an award has been made, are entitled to payment even though they cannot present a certificate of the amount.—(4 : 504.)

16. A draft drawn by one of two Indian commissioners sent to treat with the Prairie Indians, to the order of, and endorsed and negotiated by the other, to Barnley & Co., the holders, should be paid, notwithstanding the proviso to the appropriation act subsequently passed.—(4 : 518.)

17. Upon a reconsideration of the claim of David Taylor to payment of an award by the commissioners, upon further evidence produced, it appears that the claim was not adjudicated within the terms of the treaty.—(4 : 528.)

18. Therefore payment of the claimant cannot be properly made unless the same shall hereafter be allowed by the commissioners.—(*Ibid.*)

19. The Bank of the Metropolis is entitled to payment of a draft, drawn by a contractor for removing Miami Indians to the country assigned them west of the Mississippi, upon the Secretary of War, and accepted, payable from the contract moneys, and thereafter transferred

to said bank, notwithstanding subsequent assignments of the moneys due upon said contract; such draft being a prior equitable assignment of the moneys to become due, and made with the knowledge and consent of the Secretary of War.—(4: 542.)

20. Payment of an award of the Cherokee commissioners to Betsey McIntosh, upon a claim preferred by her, under the 13th article of the treaty of 1835 with the Cherokee nation, for the value of a reservation which she had been required to abandon, cannot be made from the moneys appropriated by the acts of July 2, 1836, and June 12, 1838.—(4: 621.)

21. Where an agent and attorney for claimants, under the treaty of 1835-'36 with the Cherokees, undertook to prosecute certain claims before the commissioners for the consideration of ten per cent. on every claim awarded, and omitted to claim his per-centage upon the first award, consenting to its payment to the party, but claimed the same upon the payment of a subsequent award as well as the ten per cent. on said last award: *Held*, that there should not be deducted from the last award any per-centage which may have accrued to the agent and attorney upon other claims.—(5: 13.)

22. Payments of the commissioners' awards should be made to the claimants, or their executors or administrators, unless some other person shall produce a warrant of attorney, duly executed, referring to the resolution allowing the claim and specifying the amount, and authorizing him to receive it.—(5: 36.)

23. The Senate bill, reported on the 9th February, 1849, to provide payment for horses or other property lost or destroyed in the military service of the United States, embraces field, staff, and other officers, mounted militia, volunteers, rangers, and cavalry engaged in the military service of the United States since the 18th June, 1812, whether the owners belonged to the regular or other military service.—(5: 64.)

24. As the original claimant, Henry de la Francia, was dead at the passage of the supplementary act of 14th August, 1848, authorizing the Secretary of State to settle his claim for advances, &c., and as the claim was assets belonging to his estate, the avails of which are to be accounted for as such, the amount awarded should be paid only to an administrator duly appointed and authorized to receipt for the estate.—(5: 135.)

25. But as it appears that a competent court has decided de la Francia to be the sole distributee entitled to the amount from the administrators, the secretary is advised to take a receipt from him or his attorney also.—(*Ibid.*)

26. Under the power of attorney, executed by J. de la Francia to James Bowie, the latter had authority to substitute William C. Johnson in his stead.—(5 : 137.)

27. The payment of a liquidated demand against the government to a person not authorized to receive it does not relieve the government from responsibility to make payment to the proper claimant, and the loss must fall upon the United States.—(5 : 183.)

28. No part of the money appropriated for *per capita* payments to the Cherokees can be paid otherwise than by an equal distribution of it among those Indians individually.—(See opinion of 16th June, 1851.—5 : 502.)

29. Acts of Congress, directing the payment of annuity money to individuals of the Miami Indians residing in the State of Indiana, are not in contravention of treaty stipulations between the United States and the Miami Indians.—(6 : 440.)

30. A professed award, for the value of an improvement under the provisions of the Cherokee treaty of 1835, which was made by the commissioners in blank as to the sum, cannot be paid as an award in virtue of the act of July 31, 1834, making appropriations for the execution of that treaty.—(7 : 54.)

31. The question whether the United States will pay, according to their original tenor, drafts drawn by the Mexican government under the Mesilla convention, or, suspend the payment at the subsequent request of said government, is matter of political not of legal determination.—(7 : 599.)

PENSIONS.

-
- I. GENERALLY, (AND HEREIN OF "LINE OF DUTY.")
 - II. UNDER THE ACT OF 1828.
 - III. UNDER THE ACT OF 1830.
 - IV. UNDER THE ACT OF 1836.
 - V. REVOLUTIONARY PENSIONS.
 - VI. INVALID PENSIONS.
 - VII. WHO ARE ENTITLED TO BOUNTY LANDS.
 - VIII. COMMISSIONER OF PENSIONS.
 - IX. PENSION AGENTS.
-

I.—GENERALLY, (AND HEREIN OF "LINE OF DUTY.")

1. Officers, privates, &c., who, although not "wounded," have lost their health while in the line of their duty to such an extent as to be disabled from performing further duty, are within the meaning of the term "otherwise," and are *prima facie* entitled to the charitable relief provided by law.—(1: 181.)

2. Every officer in full commission, and not on furlough, must be considered on duty, though at the moment no particular duty is assigned him.—(*Ibid.*)

3. The act of 11th January, 1812, does not provide pensions for aids-de-camp, as such, regulated by their pay as such; and, therefore, until further legislation, they can receive only the pensions to which their commissions entitle them.—(1: 413.)

4. It is irregular for the War Department to accept certificates of navy surgeons instead of their "affidavits," as required by the act of 3d March, 1819, regulating payments to invalid pensioners.—(1: 533.)

5. Under the act of 15th May, 1820, pensions do not commence until the testimony in the case shall have been taken, authenticated, and in all respects completed, as the same is required to be in order to its reception at the department.—(1: 562.)

6. The widows and children of those who perished on board public or private armed vessels, since the 18th June, 1812, and prior to the 22d January, 1825, are entitled to pensions.—(1: 709.)

7. In the case of a prize vessel having foundered or been lost at sea during the above period, having a crew transferred from a private armed vessel, the widows and children of those lost in the prize vessel are entitled to pensions.—(*Ibid.*)

8. So, also, if a boat has been despatched within that period, from a public or private armed vessel, on any duty, and those on board are drowned, their widows and children are entitled to pensions.—(*Ibid.*)

9. The widow of a person serving on board a private armed vessel, who has died by reason of a wound received while acting in the line of his duty, is entitled to half the monthly pension to which the rank of the deceased would have entitled him for the term of five years; but in case of her death or intermarriage during the said term of five years, the half pay for the remainder of the term goes to the child or children of the deceased.—(2: 1.)

10. It is a vested right for so much money per annum for five years, subject to be discontinued and defeated by her death or marriage at any time within that term, but only from that time; and if the widow has neglected to receive all her dues from the government up to the time of her marriage before marriage, she may claim it afterwards.—(*Ibid.*)

11. All the laws giving pensions to widows and children on the navy pension fund take the half pay of the deceased officer, seaman, or marine, as the measure of the pension, so that twenty years' pension can only equal twenty years' half pay.—(2: 95.)

12. The husband of a woman, after her marriage, in her right may receive that portion of the pension which accrued to her during her widowhood; but all the laws discontinue the pension on her marriage, so that nothing can accrue after that event.—(*Ibid.*)

13. It is the manifest policy of the law, and it has been the uniform practice of the department, to discontinue pensions to children after they have attained the age of sixteen years.—(*Ibid.*)

14. The act of 2d March, 1821, to reduce and fix the military peace establishment, has neither repealed nor changed in any manner the claims for pensions given by the analogous act of 1815, and the acts to which it refers. The eleventh section of the former act recognizes all the objects provided for in the seventh section of the act of 1815.—(2: 188.)

15. Whether or not a former Secretary of War committed an error in allowing a pension for a partial instead of a total disability, the decision can only be remedied by an application to Congress.—(2: 309.)

16. The Secretary of War may pay to a pensioner the amount which

Congress has directed to be paid him out of the general appropriation for revolutionary pensions for the current year, although the amount was not contained in the estimates on which the general appropriation was made.—(2 : 343.)

17. The act for the relief of the widows and orphans of the officers, seamen, and marines of the sloop-of-war *Hornet*, gave to the widows, children, parents, brothers, and sisters of those men a sum equal to six months' pay of their respective relatives, from which may be retained the moneys paid them by mistake.—(2 : 345.)

18. All moneys which have been advanced for pay supposed to have accrued since September, 1829, have been improperly paid and may be recovered back.—(*Ibid.*)

19. Widows and children of officers, seamen and marines, who have died since the late war, of wounds received during the war, are entitled to a renewal of their pensions under the act of 1819.—(2 : 371.)

20. Under the act of April 24, 1830, for the relief of the widows and orphans of the officers, seamen, and marines of the sloop-of-war "*Hornet*," relatives who are of the half blood are entitled to share with those of the whole blood in the order pointed out by the act.—(2 : 399.)

21. Looking also to the terms of this act, and to the intention of its framers, the collateral relatives, whether of the half or whole blood, are entitled to participate equally in the bounty which it provides.—(*Ibid.*)

22. Pensioners whose means of support are sufficient, independent of the pension, may be dropped from the roll.—(2 : 502.)

23. Persons who served on board privateers are not embraced by the pension law of 1832. The act applies only to those in the public naval forces.—(2 : 531.)

24. A pension erroneously paid to a widow cannot be recovered back, nor set off against a pension which she is actually entitled to receive.—(2 : 532.)

25. The applicant, Mrs. McCormic, is entitled to her pension during the time she remained the widow of Lieut. Leary.—(2 : 548.)

26. In order to entitle the widows and orphans of the officers who are wounded and die in the service of the United States to the pensions given by the act of March 3, 1815, it is necessary that the wound should be received while in service, under that law; wherefore a wound received in 1814, and death in consequence of it in 1828, will not entitle the widow or children to the pension.—(2 : 569.)

27. In cases of deceased pensioners leaving widows who have also

deceased before demanding the amount, the representatives of the widows only can demand the balances due.—(2: 613.)

28. Where there are no widows but several children, some of whom die before payment, the surviving children, as such, are only entitled to their distributive shares of the amounts due at the decedent's death; and the legal representatives of the deceased children must receive their shares.—(*Ibid.*)

29. The widow of a sailing master who died in 1813, but not in consequence of disease contracted, or of injury received, while in the service, is not entitled to be placed on the pension list—the laws respecting the navy fund not making any provision for such case.—(2: 662.)

30. Where the pay of the officer was regulated, at the time of his decease, by the act of March 3, 1835, fixing it at \$4,000 per annum, and he died leaving a surviving widow, who demands a pension under the act of March 3, 1817, giving half pay, &c., to widows: *Held*, that the amount of the widow's pension must be regulated by the act of 1835, deducting all allowances usually made for all rations except one from the said \$4,000, and paying her one half of the residue.—(2: 721.)

31. Pensions to widows must be applied for during widowhood; if they neglect to apply for them before their marriage, they are concluded; but see § 32, *post*.—(3: 36.)

32. The pension to a widow is a vested right, ceasing upon her marriage as to further claim upon the government, but remaining valid for arrears.—(3: 68.)

33. The rights of the surviving husband to those arrears depend upon the laws of the State where the parties resided at the time of the wife's demise.—(*Ibid.*)

34. The widow of a master-at-arms in the navy of the United States, who died in consequence of a fall in the ship Ontario, is entitled to a pension.—(3: 71.)

35. If the husband is to be regarded only as a seaman, and the widow not within the act of 1813, she is referred to the act of March 3, 1817, as all rights under that law are saved, although the act has been since repealed.—(*Ibid.*)

36. Where a soldier, embraced in the first section of the act of July 4, 1836, has died leaving a widow and children, and the widow has married before the passage of the act, the children are entitled to the benefits of the law.—(3: 147.)

37. The children of widows pensioned under the 3d section of the act

of July 4, 1836, who shall have died leaving a balance due them from the government, are entitled to such balance to the exclusion of executors and administrators.—(3 : 151.)

38. Pensions under that act are not liable for the pensioner's debts.—(*Ibid.*)

39. Mrs. Perry is not excluded by the act of 1821 from the benefit of the act of 1817, and her rights vested under it; so that the first act mentioned is to be regarded as a grant to her and her family over and above her pension under the last mentioned act.—(3 : 158.)

40. Widows of officers, seamen, or marines, are not entitled to pensions under the act of March 3, 1837, who re-married before the passage of the act.—(3 : 194.)

41. Children of decedent officers, &c., whose widows married before the passage of the act, are entitled to the half pay granted by it until they arrive at the age of twenty-one years.—(*Ibid.*)

42. Widows of navy agents are not entitled to pensions under the act of June 30, 1834, concerning naval pensions and the navy pension fund. Navy agents are neither officers, seamen, nor marines; nor are they in the naval service within the meaning of the law.—(3 : 196.)

43. Under the act of March 3, 1837, the daughter of a deceased sailing master, who was paid a pension under the act of March 3, 1817, until she was sixteen years old, is now entitled to five years' additional pension, notwithstanding she is now over the age of twenty-one years.—(3 : 197.)

44. Where the widow of an officer of the navy died before the passage of the act of 1837, her representatives can take nothing by the act, as no right to a pension vested in her.—(3 : 199.)

45. Widows of officers, seamen, or marines, who re-married before the passage of the act of March 3, 1837, are not entitled to pensions under that act, but their children are.—(3 : 200.)

46. As there was a joint resolution passed for the relief of Mrs. Decatur on the same day of the passage of the act for the more equitable administration of the navy pension fund, she must elect under which she will take, for but one pension can be allowed her.—(3 : 200.)

47. Grandchildren are not included in the law for the more equitable administration of the navy pension fund.—(3 : 201.)

48. But the children (the widow being dead) take in equal moieties from the death of the father until the death of one of themselves, or until they arrive at the age of twenty-one years. Where, as in this case, one of the children died before the other arrived at the age of

twenty-one, the latter is entitled to the full pension from her death until that time.—(*Ibid.*)

49. Where the soldier shall have died before June 7, 1832, and subsequent to March 4, 1831, leaving a widow who demised before the former date, the children of the *soldier*, not of the widow, are entitled to the pension.—(3 : 202.)

50. The act of March 3, 1837, for the more equitable administration of the navy pension fund, ought not to be so construed as to include cases where the death occurred anterior to the date of the law by which the fund was established.—(3 : 246.)

51. The second section of said act adopts the pay of the navy as it existed January 1, 1835, as the standard for all cases coming within that section.—(3 : 291.)

52. A steward serving on board a ship-of-war is borne on the ship's books as one of the crew, and as such is amenable to martial law. He is a *seaman*, within the pension laws, so as to entitle his widow to a pension.—(3 : 292.)

53. Under the act of 1837, (though not under the acts of 1813 and 1814,) it is necessary to be made to appear that the death occurred in the naval service, provided it appear to have been occasioned by a wound received whilst in the service and line of duty.—(3 : 324.)

54. Upon a re-examination of the several acts giving pensions to the widows and children of officers having died of wounds received whilst in the line of their duty, it is *held*, that the death must have occurred while the officer was in service, in order to entitle the widow and children to the bounty.—(3 : 338.)

55. Widows and children of paymasters of the army who shall have died while in service, by reason of wounds received in actual service, are entitled to the benefit of the 15th section of the act of 16th March, 1802, fixing the military peace establishment.—(3 : 434.)

56. Arrears of a pension due a navy pensioner at the time of his death must be paid over to his legal representatives. It does not revert to the navy pension fund.—(3 : 435.)

57. The widow of a surgeon in the navy who was commissioned in 1811, resigned in 1824, reappointed in 1827, and who died in the service in 1832, is entitled, in respect to the time which is to determine its amount, to a pension only under the last appointment.—(3 : 468.)

58. Commodore Porter, who is borne on the pension roll at the rate of \$40 per month, is entitled both to his pension and his regular pay as minister at Constantinople.—(4 : 39.)

59. The widows of officers who were dead at the passage of the act of 1832, but who, if alive, would have received pensions under it, are not entitled to the benefit of the act of 1338.—(4: 46.)

60. The pension of Pigeon, the Cherokee chief, is to be paid to his personal representatives.—(4: 55.)

61. If a person entitled to a pension be over paid by mistake, or by the application of a wrong principle of computation, and yet have a further claim against the government, the claim may be set off against the said over payment.—(4: 70.)—See *ante* (24,) *contra*.

62. In consequence of the executive construction given to the laws of 1838, Congress has declared, by resolution, that it embraces the cases of widows whose husbands were alive in 1832.—(4: 91.)

63. Widows take for five years, beginning in 1836, and are to be paid, according to the letter of the law, from that time.—(*Ibid.*)

64. Where the husband of the applicant, Commodore Porter, in his lifetime applied for a pension for disability incurred in 1803, and the same was allowed by the proper department at the rate of \$40 per month, to take effect from the 24th January, 1825, when he retired from service in the navy; and then, in 1839, made an application for arrears from 1803, under the provisions of the act of 3d March, 1837, and received a reply from the Secretary of the Navy, deciding that there was due him a pension at the rate of \$12 50 per month, from 1803 to 24th January, 1825, but did not receive the same in his lifetime, on the application for it by his widow: *Held*, that such allowance exists in the form of a debt due to his estate, and that the legal representatives are entitled to receive it.—(4: 238.)

65. The widow of W., late quartermaster in the marine corps, and who at the time of his death was entitled to \$60 per month, is entitled to half pay.—(4: 279.)

66. But as a committee of the Senate have taken a different view of the law, and have made a report against her, a satisfaction of the claim is not recommended until a legislative interpretation shall be given to the laws.—(*Ibid.*)

67. The 2d section of act of 23d August, 1842, repeals the 1st section of act of 3d March, 1837, and no allowances can now be made under it.—(4: 319.)

68. The act was continued in force, temporarily, by act of 16th August, 1841, in regard to certain cases; but was revoked by the act of 1842, leaving no remedy for those cases except in an application to Congress.—(*Ibid.*)

69. The child of Passed Midshipman Bacon is not entitled to full

five years' pension under the acts of 30th June, 1834, and 15th June, 1844, but only to the remainder of the five years' pension not received by the widow during her lifetime.—(4: 353.)

70. The pensions granted to widows, &c., by the act of 3d March, 1845, commence from the period of their cessation under the former acts of 1834, 1837, and 1841, respectively.—(4: 357.)

71. The act of March 3, 1845, extends a pension for five years to those widows who received pensions under former acts, in consequence of the death of their husbands having been occasioned by wounds received, or by accident, or disease contracted, whilst acting in the line of their duty as officers, seamen, or marines.—(4: 360.)

72. The act of 1837 was a renewal of pensions previously granted to widows entitled under the act of 1834, within the meaning of the act of 3d March, 1845.—(*Ibid.*)

73. The fact of their being placed on the pension roll by virtue of the mere comprehensive terms of the act of 1837, does not affect their rights under the act of 3d March, 1845.—(*Ibid.*)

74. The terms of the act are fully satisfied by extending its provisions to cases which were within the act of 1834, although the pensions were granted for an indefinite period; and this whether the pensions were granted by the Commissioner of Pensions under the act of 1834, or that of 1837, provided the pensions granted were authorized by act of 1834.—(*Ibid.*)

75. The 4th section of the act of 3d March, 1845, providing that accounts adjusted by the accounting officers of the treasury shall not be reopened without authority of law, and that no account shall be acted upon at the treasury unless presented within six years from the date of the claim, does not affect applications under a general law for pensions.—(4: 366.)

76. Pensions are gratuities, not claims or accounts, within the meaning of the statute; yet when these are once placed on the pension roll they become claims to semi-annual payments, which, if not asserted within six years cannot be audited without the authority of Congress.—(*Ibid.*)

77. The act does not affect claims for half pay of officers of the Virginia State line, provided for by the act of the 5th of July, 1832.—(*Ibid.*)

78. The 2d section of the act May 7, 1846, was intended to facilitate applications of widows to pensions, founded on their marital relations, by operating on the proof required.—(4: 496.)

79. To establish their claims it is sufficient for widows to prove that their husbands were entitled to pensions, and that they are the widows of such pensioners.—(*Ibid.*)

80. The fact that the husbands were upon the roll and drew pensions is presumptive evidence that they were entitled to them ; yet, if they were not, that fact may be proved.—(*Ibid.*)

81. General reputation and cohabitation are, in general, sufficient evidence of marriage ; but as this is only presumptive, it may be rebutted by countervailing testimony.—(*Ibid.*)

82. The law should be construed liberally and favorably towards applicants.—(*Ibid.*)

83. The act of March 3, 1845, authorizes the renewal of pensions to such widows of officers, seamen, and marines only as had enjoyed a five years' pension under previous laws, and which had ceased in consequence of the expiration of the period for which the same had been granted or renewed.—(4 : 548.)

84. Widows who had not been such for five years, or who had not exhausted their five years' pension under former laws, are not provided for.—(*Ibid.*)

85. The applicants in this case, not having been widows for the period of five years, and not having exhausted their pensions under former laws, are therefore not entitled to the benefit of the act of March 3, 1845, but are left to the generosity and justice of Congress in the premises.—(*Ibid.*)

86. A lieutenant, otherwise entitled to a pension, is not entitled to receive it whilst on duty and in receipt of his pay as an officer of the navy. Nor can he receive it when not on duty, whilst in receipt of the pay allowed to his grade.—(4 : 582.)

87. Officers who may be waiting orders, or on leave or furlough, can receive on account of their pensions only so much as, when added to their pay when on leave, &c., will amount to the pay of their grade when on duty.—(4 : 587.)

88. The acts of Congress granting pensions to widows of officers, seamen, and marines, who have died whilst in the service, or from disease contracted or injuries received whilst in the line of their duty, do not include cases of widows of engineers in the navy appointed pursuant to the act of 1842.—(4 : 631.)

89. Pensions to widows of officers, seamen, and marines, when allowable, commence from the date of the passage of the act (1834) in cases where the death of the husband occurred prior to that time, and from the death of the husband in all other cases.—(*Ibid.*)

90. The first section of the act August 11, 1848, renewing certain naval pensions, embraced all such widows and children as were receiving pensions under any of the laws of Congress passed prior to the 1st of August, 1841.—(5 : 24.)

91. The other class comprises all those widows and children who received pensions at any time within five years prior to the passage of the act.—(*Ibid.*)

92. The word “special” occurring in said act is construed to mean “particular,” and not “private,” as it is used in that sense.—(*Ibid.*)

93. As Congress neglected to provide, in terms, for widows of 2d lieutenants of marines in the second section of said act, it may be inferred that it intended to refer in the provision to lieutenants, without any other designation.—(*Ibid.*)

94. An officer who, having lost a limb in the war of 1812, was mustered out of the service upon a captain’s pension, and afterwards appointed battalion paymaster, may be regarded as having been appointed to the civil branch of the service within the meaning of the act of 30th April, 1844, and entitled to receive both his pension and his pay.—(5 : 51.)

95. The joint resolution of Congress of August 10, 1848, placed the officers of the marine corps who served with the army in the war with Mexico on an equal footing with the officers of the army with whom they served.—(5 : 59.)

96. The phrase “other remuneration,” employed in said resolution, must be understood to refer to pensions.—(*Ibid.*)

97. The rule of the pension office that an application for a pension cannot be entertained after the lapse of twenty-five years from the time when the disability was incurred, is unauthorized by law, and therefore invalid.—(5 : 62.)

98. The power conferred upon the Secretary of the Navy to establish rules and regulations for the examination and adjudication of claims for admission upon the roll, does not authorize the enactment of a rule or statute of limitations.—(*Ibid.*)

99. It was the intention of Congress to require proof of indigence as well as of service under the new pension law on the part of those seeking its benefits.—(5 : 711.)

100. The Secretary of War has not power to restore to the pension list the name of any person who may have been stricken off on the evidence of the schedule.—(5 : 731.)

101. Colonel Johnson’s pension is to commence from the time of the certifying of the testimony.—(5 : 750.)

102. Testimony is never complete until it comes fully authenticated.—(*Ibid.*)

103. When an individual by name is placed on the roll of navy pensioners by special act, he becomes entitled only to such allowances and under such circumstances as if he had been placed on the roll in the ordinary course of administration, in common with all other pensioners of the same class.—(6 : 718.)

104. When the statute provides pension for disability or death, occasioned by wounds or injuries received, casualty occurring, or disease contracted, in the line of duty, it intends that the performance of duty must have relation of causation or consociation, mediate or immediate, to the wound, the casualty, the injury, or the disease, which produces the disability or death.—(7 : 149.)

104. To determine the right of pension, the question is not whether, when the cause of disability or death occurred, the party was on duty or not, in active service, or on furlough or leave, in arrest or not, but whether, in any of the possible conditions of service, the cause of disability or death was appurtenant to, dependant upon, or connected with, acts within, or acts without, the line of duty.—(*Ibid.*)

105. Upon the question of casualty, the opinions of experts are evidence, but they do not constitute either exclusive or conclusive proof; and the question is to be judged by the real facts like any other matter of evidence.—(*Ibid.*)

106. Where the proofs as to the question of actor and subject are balanced, and it is impossible to determine by them whether the case be one of contemporaneity or collocation only, or of cause and consequence, it is a reasonable inference of public policy to presume in favor of the service.—(*Ibid.*)

107. It is according to public policy to presume in favor of the service, where the line of duty enters potentially into the causes of disability or death, although it be not certainly provable that it was the exclusive or predominant cause.—(*Ibid.*)

108. Arrearages of pensions claimed and adjudicated belong to the representatives of the party on his decease as a debt due from the government.—(7 : 717.)

109. *Secus*, when the right to claim a pension exists, but the right has not been asserted by the party in his lifetime.—(*Ibid.*)

110. An exception to this rule has been established in practice by misconstruction of the statute in favor of the children of persons entitled by reason of service in the revolutionary war.—(*Ibid.*)

111. While it may be inexpedient to disturb this practice now, it cannot be extended, by further misconstruction, beyond the case of children.—(*Ibid.*)

II.—UNDER THE ACT OF 1828.

1. The first section of the act of 1828 does not extend all provisions given by the law of 1814, but such part of them only as, under the operation of that act, had been assigned or belonged to the widow and children of those officers, seamen, and marines, who had been killed in battle, or who had died of wounds received in battle during the late war—(2: 95.)

2. So far, and so far only as the act of 1817 operated to give pensions to the widows and children of officers, seamen, and marines, who died in the naval service during the late war, in consequence of disease contracted and casualties and injuries received in the line of their duty, those provisions have been continued by the acts of 1819, 1824, and 1828, and are so far embraced by the first section of the last mentioned law.—(*Ibid.*)

. A pension can be allowed to a widow who was or had been within one year before in the receipt of a pension, under the acts of 1814, 1818, or 1824, but not to the children; the second section of the act of 1828 making no provision for children, but for widows only.—(*Ibid.*)

III.—UNDER THE ACT OF 1830.

1. The act of May 31, 1830, is entirely prospective. It declares that the act of May 15, 1828, shall not be construed to embrace invalid pensioners; that the pension of invalid soldiers shall not be deducted from the amount receivable by them under the said act. These provisions require the department to abstain from making such deductions hereafter, but do not authorize the payment of such as have been previously made.—(2: 350.)

2. The force of the act of May 31, 1830, seems to be directed against the second section of the act of May 15, 1828, which is confined to the surviving officers of the army of the revolution in the continental line, entitled to half-pay, &c., and does not extend to the non-commissioned officers, musicians, or privates of the army.—(*Ibid.*)

IV.—UNDER THE ACT OF 1836.

1. The act of May 20, 1836, placed pensioners on precisely the same footing as if the act to prevent defalcations, &c., had never been

passed ; consequently all moneys which have been withheld from pensioners under the construction theretofore given to the act to prevent defalcations ought to be refunded.—(3 : 135.)

2. Pensions, under the act of July 4, 1836, are not liable for the pensioner's debts.—(3 : 151.)

3. Pensions to widows and orphans granted by the first section of the act of July 4, 1836, commence from the day when the bill was approved by the President, in all cases in which the death of the party serving occurred anterior to that day ; in subsequent cases from the death of the party.—(3 : 152.)

4. The act embraces the cases of widows and orphans whose husbands and fathers might subsequently die, as well as those who did die before its passage.—(*Ibid.*)

5. The third section of the act of July 4, 1836, granting half pay to widows or orphans where their husbands and fathers have died of wounds received in the military service of the United States, does not provide for widows of officers and soldiers who have died since the passage of the act.—(3 : 203.)

6. It does not extend to the widows of officers who were living at the time when the act of June 7, 1832, was passed.—(*Ibid.*)

7. The right of a widow to a pension under the act is a vested interest that is not defeated by her neglect to apply for it ; and it goes to her personal representatives at her death, there being no special provision giving it a different direction.—(*Ibid.*)

8. Where the husband received a pension at his death, the pension of the widow, under the act of July 4, 1836, commences only from that date.—(*Ibid.*)

9. Widows on the pension roll and receiving pensions under the third section of the act of July 4, 1836, are not entitled to pensions under the act of July 7, 1838.—(3 : 367.)

V.—REVOLUTIONARY PENSIONS.

1. The form prescribed in the first section of the act of March 18, 1818, in relation to certain indigent persons who performed duty in the land and naval service of the United States during the revolutionary war, to verify the amount of property of the applicant, except the oath of the party and the certificate of the clerk, must be gone through with in open court.—(1 : 356.)

2. It was the intention of Congress to make the amount of the schedule the test of the indigence of the applicant ; and that, conse-

quently, the relief given by the former act is to be continued in every case in which the schedule shall exhibit proof of such indigence that the income of the property is inadequate to the support of the applicant.—(*Ibid.*)

3. By the term “end thereof,” (revolutionary war,) contained in the pension act of March 18, 1818, is meant until the treaty of peace was ratified.—(1: 701.)

4. The preliminary articles provided that there should be a peace when the terms of a peace should be agreed on between Great Britain and France, and his Britannic Majesty should be ready to conclude it; but as they were only preparatory to peace, there was no peace in contemplation of law until the war of the revolution terminated by the ratification of the treaty in 1783.—(*Ibid.*)

5. The first section of the pension act of June 7, 1832, embraces all surviving officers, musicians, soldiers, and Indian spies, who served in the continental line, State troops, volunteers, and militia, irrespective of their places of residence, except foreigners, who held commissions in the American army.—(2: 539.)

6. If an applicant has served in different grades for a time sufficient to entitle him to a pension, it must be graduated by the respective terms of service in each grade.—(*Ibid.*)

7. The act of 14th July, 1832, does nothing more than repeal the law of 3d March, 1819, whereby the necessity of adducing proofs of continued disability is dispensed with; it does not restore to the pension roll any one who had been dropped from it.—(*Ibid.*)

8. It is not obligatory on the Secretary of War to issue new pension certificates where the parties have pledged them for debt and creditors refuse to deliver them without payment. The law does not require them in such cases to be renewed; nor ought the refusal of creditors to redeliver certificates to pensioners to prevent the payment of such pensions.—(*Ibid.*)

9. The pension act of 1832 does not exclude those who have received pensions under other acts of Congress, where the provisions of this act are more favorable to their interests.—(2: 568.)

10. A commissary is within the act of 1832, under the construction which it has received at the War Department, though he were excluded by that of 1828.—(*Ibid.*)

11. Widows of revolutionary soldiers, whose first marriage took place after the expiration of the last period of their service, and before January 1, 1794, who re-married anterior to the passage of the act of July 7, 1838, are not entitled to pensions.—(3: 376.)

12. The act of March 3, 1837, and the joint resolution of July 7, 1838, have so far modified the act of 1836 that widows of revolutionary soldiers, who, having re-married, are again widows, irrespective of the date of the death of the second husband, or whether the second husband was a revolutionary soldier or not, are entitled to half pay; *provided*, said widows are otherwise entitled to the same.—(3: 477.)

13. Where an act of Congress directed the Secretary of War to place the name of a widow of a revolutionary soldier, who was a pensioner, upon the roll of pensions at the same rate which her husband received, to commence at a date antecedent to the passage of the act, and it is discovered that she actually died before the passage of the act, leaving children surviving: *Held*, that the payment be made to the children, according to the provisions of the act of the 2d March, 1829.—(3: 540.)

14. All declarations for pensions made prior to the act of April 30, 1844, restricting widows to only such part of the five years' pension as their husbands did not receive, are free from the influence of the restriction.—(4: 376.)

15. Widows who prepared their declarations prior to 30th April, 1844, and filed them before 23d January, 1845, from whom any part was withheld, on account of payment to their husbands, are entitled to the whole amount.—(*Ibid.*)

16. There is no authority for making payment of the arrears of pensions due widows of revolutionary officers at their death, who have left no children, to executors or administrators.—(4: 504.)

17. Even where widows have died leaving children, the arrears cannot be received by executors and administrators as assets for the payment of the decedents' debts.—(*Ibid.*)

18. Where the arrears of a pension due at the decease of the widow of a revolutionary officer were paid to the administrator appointed in one county of the State of Indiana, and an administrator subsequently appointed in another county preferred a claim for the same amount: *Held*, that the Secretary of War, who made the payment, executed all the power conferred by Congress in respect to it.—(5: 62.)

20. The representatives of a widow of a soldier of the revolution, who received a pension under the act of 7th July, 1838, from the period of her husband's death to her own, have no claim for further payment on the pretence that her pension should have commenced at an earlier date.—(5: 248.)

21. The pension having been a personal bounty to the widow her-

self, and the decision fixing the time for its commencement having been acquiesced in by her, it cannot now be contested by her representatives.—(*Ibid.*)

22. Where the pension acts omit to make mention of representative persons, the latter are not entitled according to the tenor and true intendment of the acts.—(7: 619.)

23. The revolutionary pension acts have been so long misconstrued in this respect, that it seems too late to return to their proper construction.—(*Ibid.*)

VI.—INVALID PENSIONS.

1. The cadets at West Point who have been, or may be, wounded whilst in the line of their duty, are entitled to be placed on the list of invalids, as provided in the acts of 16th March, 1802, 29th April, 1812, and 3d March, 1815.—(1: 348.)

2. Navy pensioners are included in the act of 3d March, 1819, regulating payments to invalid pensioners.—(1: 457.)

3. A seaman disabled by punishment inflicted by an enemy for endeavoring to escape from him after having been taken prisoner, is within the spirit and letter of the act 23d April, 1800, granting pensions to seamen disabled whilst in the line of their duty.—(1: 461.)

4. An invalid soldier, who has proved his title to a pension, and has been placed on the pension list, but who has omitted for more than two years to produce the proof of two surgeons, as required by the act of 3d March, 1819, may receive his pension whenever he offers such proof, without making another original application.—(2: 478.)

5. In order, however, to entitle him to the pension for the whole of the time past, the proof must apply to his condition as an invalid at the expiration of every two years, and show that at those periods his disability continued.—(*Ibid.*)

6. It rests with the President to prescribe the regulations under which a person shall be admitted as a pensioner, and the rate of pay which he shall receive, as well under the act of 1812 as that of 1802.—(2: 519.)

7. He may apply it to civil officers receiving a certain amount of income from their offices, whilst he exempts others from its operation.—(*Ibid.*)

8. The word “disabled,” in the act of Congress of 23d April, 1800, means any degree of personal disability which renders the individual less able to provide for his subsistence.—(2: 542.)

9. The act of 10th July, 1832, devolved upon the Secretary of the Navy the duty of deciding whether the disability is such as to entitle applicants to admission on the roll of navy pensioners, and what amount they shall receive.—(*Ibid.*)

10. A sergeant who was disabled by wounds inflicted on him by the officer of the guard, in 1813, whilst attempting to pass the guard, under the sanction of a written permit granted by his commanding officer, is entitled to a pension under the invalid pension law, provided the wounds were given without sufficient justification, and he had a permit to pass, and was passing the guard for some purpose growing out of, or connected with, the public service.—(2: 589.)

11. Invalid pensioners previous to the act of 18th March, 1818, who relinquished their pensions as invalids, in order to receive the benefit of that act, cannot, since the act of 19th February, 1833, receive annuities under the act of 1832, and have a revival of their pensions as invalids.—(2: 612.)

12. By the terms "invalid pensioners" and "invalid soldiers," used in the amendatory law of 1833, Congress meant those persons, and those only, who were borne as invalid soldiers on the invalid pension rolls; wherefore, those not so borne on those rolls cannot be considered within the law.—(*Ibid.*)

13. Nor is there any legal provision which authorizes the transfer of their names from the rolls of pensioners, under the act of 1818, to the invalid pension roll on which they originally stood.—(*Ibid.*)

14. The regulation restricting the commencement of pensions to the time when the papers shall be authenticated is repugnant to the act of 1820.—(3: 58.)

15. The act of 23d April, 1800, does not authorize pensions for wounds received in the line of duty prior to the passage of the act; nor can the act of 3d March, 1837, be construed to embrace such cases.—(3: 373.)

16. The act of 10th July, 1832, transferred to the Secretary of the Navy all the powers theretofore possessed by the commissioners of the navy pension fund to make regulations for the admission of persons upon the roll of navy pensioners, and for the payment of such pensions.—(5: 41.)

17. If it has been the settled rule of the department that pensions shall commence at the time of completing the proofs, it will be very difficult now to depart from it.—(*Ibid.*)

18. The commissioners of the navy pension fund were authorized and directed to make such rules and regulations as should appear to

them expedient for the admission of persons on the roll of navy pensioners, and for the payment of such pensions; and they having provided that pensions are to commence from the time of completing the proofs, and the same having been continued since their powers were transferred and devolved upon the Secretary of the Navy, the practice should be adhered to.—(5: 133.)

19. It may be doubtful whether the provisions of the 2d section of the act of the 4th February, 1822, though general, are not to be confined to cases of claims for revolutionary pensions.—(*Ibid.*)

20. The date of the invalid pension of an officer of the army depends on the lineal, not the brevet, rank, of such officer.—(6: 88.)

21. Where the pension acts omit to make mention of representative persons, the latter are not entitled according to the tenor and true intendment of the acts.—(7: 619.)

22. The revolutionary pension acts have been so long misconstrued in this respect that it seems too late to return to their proper construction.—(*Ibid.*)

23. But no such misconstruction of the invalid pension acts has obtained in practice, nor can it now be allowed.—(*Ibid.*)

24. Cherokee Indians, entitled to invalid pensions by treaty, have no larger rights in this respect than officers and soldiers of the army.—(*Ibid.*)

25. Hence, a pension, claimable but not claimed by a Cherokee in his lifetime, does not descend as arrears to his legal representatives.—(*Ibid.*)

VII.—WHO ARE ENTITLED TO BOUNTY LANDS.

1. Non-commissioned officers and soldiers, whether minors or not, enlisted after 10th December, 1814, as well as before, are entitled to a bounty of 320 acres of land, on presenting the proper certificates.—(1: 184.)

2. Under the act of 16th April, 1816, a child must have been sixteen years of age at the death of the non-commissioned officer, musician, or private, in order to invest the guardian with the right to commute the bounty land for half pay.—(1: 195.)

3. A person who enlisted as a soldier in the war of 1812, and served as such until commissioned, but who resigned his commission before the close of the war, is entitled to bounty land, provided the enlistment was for five years, or during the war.—(1: 273.)

4. Although it was not the intention of Congress to incorporate negroes and people of color with the army, any more than with the

militia of the United States, yet as they were enlisted in the usual manner, and treated as a part of the army by the government officers, a *practical* construction has been given to the law which entitles colored soldiers to the promised land-bounty.—(1 : 602.)

5. Soldiers enlisted to serve for the term of five years in the war of 1812, and who were honorably discharged before the expiration of their term of service in consequence of having furnished accepted substitutes, are entitled to 160 acres of land, even though the substitutes may have deserted.—(2 : 470.)

6. Discharged soldiers, who have once elected to take treasury scrip instead of bounty lands, and have obtained the requisite certificate therefor from the Commissioner of Pensions, cannot afterwards be permitted to surrender such scrip and obtain a warrant for lands instead.—(4 : 642.)

7. Soldiers who enlisted during the war with Mexico, for twelve months, but who, without having been wounded or sick, were honorably discharged by General Taylor, are not entitled to bounty lands under the act of 11th February, 1847.—(4 : 718.)

8. A soldier who enlisted in the army in 1846, for the term of five years, and served until April, 1849, when, in consequence of the reduction of the army after the termination of the war with Mexico, he was honorably discharged, against his own wishes, is entitled to the bounty land provided by the 9th section of the act of the 4th February, 1847.—(5 : 147)

9. The entire portion of the marine corps, whether they served on ship-board or land, on the Mexican coast, or in the interior, in the Mexican war, are to be considered within the meaning of the resolution of the 10th August, 1848, as having “served with the army in the war with Mexico,” and entitled to the bounty land and other remuneration which that resolution provides.—(5 : 155.)

10. Where a land warrant was issued to the administrator *de bonis non* of a deceased colonel, for the benefit of the devisees, scrip in exchange may issue in the same manner and for the same purposes.—(5 : 308.)

(See *Public Lands*, tit. *Bounty Lands*.)

VIII.—COMMISSIONER OF PENSIONS.

1. In construing the act for the continuance of the office of Commissioner of Pensions: *Held*, that where a future time is expressed in an act of Congress, like “two years from and after the 4th day of March next,” the law-makers are to be understood as speaking from

the moment when the bill was approved by the President and became a law.—(3 : 157.)

2. There is no appeal from the Commissioner to the President.—(4 : 515.)

IX.—PENSION AGENTS.

1. The agent for paying pensions is not the accounting officer intended by the fourth section of the act of 4th July, 1836.

(See *Compensation*.)

2. The compensation allowed to pension agents by the second section of act of 20th February, 1847, does not extend to services rendered previous to the passage of the law.—(5 : 568.)

3. The authority given to the Secretary of War by the act of 20th February, 1847, may be exercised according to his discretion otherwise than in pursuance of a general prospective rule established by the department; and where such rule was made subsequent to the enactment of the second section of the act, and did not provide for the time of service intervening between the date of the law and the date of the rule, the Secretary may now allow compensation for that intermediate period.—(*Ibid.*)

PIRACY.

1. Piracy committed on the high seas, or out of the jurisdiction of a particular State, should be prosecuted in the district where the offender is apprehended or first brought.—(1 : 185.)

2. It is not piracy, under the act of 30th April, 1790, for the captain of a vessel, to whom the vessel and cargo had been consigned, with instructions to proceed to the Pacific and there sell the vessel and cargo, and remit the proceeds to the owners, to fail to remit such proceeds after having made sale according to instructions.—(2 : 19.)

3. Nor has the government the right to order a captain thus in default to be seized and brought to the United States to be tried for his conduct. Such a seizure would be false imprisonment, for which the captain might recover damages.—(*Ibid.*)

4. By the acts 23d April, 1800, of 26th March, 1804, and of 16th April, 1816, one half of the proceeds of vessels captured and condemned for piracy ought to be paid over to the navy pension fund.—(2 : 648.)

5. The necessary expenses of pilotage, maintenance, &c., incurred before the delivery of the vessel to the civil authority, ought to be paid out of the public treasury, and not charged on the proceeds of the captured vessel.—(*Ibid.*)

6. A Texan armed schooner cannot be treated as a pirate, under the act of 30th of April, 1790, for capturing an American merchantman on the alleged ground that she was laden with provisions, stores, and munitions of war, for the use of the army of Mexico, with the government of which Texas, at the time, was in a state of revolt and civil war.—(3 : 120.)

POLITICS.

1. The question whether the United States will pay, according to their original tenor, drafts drawn by the Mexican government under the Mesilla convention, or suspend the payment at the subsequent request of said government, is matter of political not of legal determination.—(7 : 599.)

POSSE COMITATUS.

1. A marshal of the United States, when opposed in the execution of his duty by unlawful combinations, has authority to summon the entire able-bodied force of his precinct, as a *posse comitatus*.—(6 : 466.)

2. This authority comprehends not only bystanders and other citizens generally, but any and all organized armed force, whether militia of the State, or officers, soldiers, sailors, and marines of the United States.—(*Ibid.*)

3. If the object of resistance to the marshal be to obstruct and defeat the execution of provisions of the Constitution or of acts of Congress, the expenses of such *posse comitatus* are properly chargeable to the United States.—(*Ibid.*)

4. Attempts, in any State of the Union, to prevent the extradition of fugitives from service, are covered by the principles of this opinion.—(*Ibid.*)

POST OFFICE DEPARTMENT.

-
- I. GENERALLY.
 - II. POSTAGE.
 - III. MAIL CONTRACTS.
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I.—GENERALLY.

1. The act of a Postmaster General in making extra allowances to mail contractors in consequence of alterations made, after the execution of the contract, in the frequency and speed of the conveyances used for transportation, and on account of the increased weight of the mailed matter, are not, where the account is still open, conclusive upon his successor; on the contrary, the latter possesses competent authority to look into such allowances, and when he finds them to have been founded on material errors of law or fact, to correct them as justice shall appear to require.—(3: 1.)

2. Although Postmasters General have no authority to bind their successors in matters of purely public concernment, the case is different in respect to transactions with individuals.—(*Ibid.*)

3. Guaranties in the form prescribed by the department, but executed without inserting the time prior to which the contract is to be executed, are not a legal compliance with the law requiring guaranties to be made.—(3: 475.)

4. The acts of March 3, 1825 and July 2, 1836, do not authorize the payment of additional compensation to contractors for transporting the mail in cases where the time of the transit only is changed, even though additional conveyances shall be required, but where the mail is carried between the same *termini* no oftener, and there is no increase of expedition on the route.—(3: 542.)

5. The act of July 2, 1736, provides for the manner in which changes are to be made in the terms of any existing contract, other than those having reference to additional service or increase of expedition.—(*Ibid.*)

6. A proviso touching the duties of postmasters to make returns of emoluments received from boxes, &c., contained in a general appropriation bill, to take effect at the commencement of a fiscal year, then

future, is to be considered as having effect from the date of its passage.—(3: 640.)

7. As the principle of *res judicata* must be adopted as a general rule for the executive departments, the Postmaster General should not meddle with any case of forfeiture finally disposed of on deliberate examination by his predecessors.—(3: 684.)

8. But the Postmaster General is vested with a discretion concerning forfeitures not passed upon.—(*Ibid.*)

9. The Postmaster General has no power to allow foreign steam packets to carry letters coastwise, even though he judge it expedient for them to do so.—(4: 3.)

10. He has power to establish a post office in the Cherokee country, provided it be upon a road constructed under the act of 1825, to establish a line of posts within it.—(4: 29.)

11. The transmission by a private express of letters, packages, &c., over mail routes, is a violation of the acts of 1825 and 1827; and the district attorney should proceed to prosecute the offenders.—(4: 159.)

12. Nor is it competent for any stage or other vehicle which regularly performs trips on a post road, or on a road parallel to a post road, to convey letters; nor may such conveyance be made by any packet-boat or other vessel which regularly plies on a water declared to be a post road, except in respect to the letters that may relate to the cargo, or some part thereof, transported by such packet-boat or other vessel.—(4: 276.)

13. Mail contractors have no authority to carry newspapers or pamphlets other than in the mail, except by authority of the Postmaster General, and in pursuance of a contract made for that purpose.—(*Ibid.*)

14. Every person who aids and abets in the violation of the 19th section of the act of 1825 is liable to the penalty thereby incurred by the owners of stages, or persons having charge of stages or other vehicles, packet-boats or other vessels therein described; and a person paying for the transportation of a vessel, &c., is an aider and abettor within the 24th section of the act.—(4: 311.)

15. But the 24th section of the act of 1825 does not embrace the offences denounced by the 3d section of the act of 1827.—(*Ibid.*)

16. The act reducing the rates of postage upon letters, &c., transported in the public mails, passed 3d March, 1845, provides against embarrassment in the mail service on account of deficiency in its revenues, by placing a fund at the disposal of the Postmaster General, to which he may resort in cases of necessity.—(4: 391.)

17. This fund should be applied to supply any deficiency which might be actually ascertained, and which might threaten to defeat the objects of the establishment, subject to the proviso, that the expenditures for the Post Office Department shall not, in the aggregate, exceed the annual amount of four millions five hundred thousand dollars, exclusive of salaries of officers, clerks, and messengers of the General Post Office, of its fund for contingencies.—(*Ibid.*)

18. The several acts of Congress regulating the compensation of postmasters invest the Postmaster General with authority to allow them commissions on all moneys by them respectively collected in each quarter of the year.—(5 : 300.)—See *Compensation*.

19. And postmasters are entitled to commissions on moneys collected for postage on foreign letters, which are payable by treaty to foreign governments, as well as upon moneys collected for postage on other matter conveyed in the mails.—(*Ibid.*)

20. The amount that may become due to Great Britain for postage on British letters collected in the United States, under existing postal arrangements with that government, cannot be abated by the amount of compensation which shall be allowed to postmasters.—(*Ibid.*)

21. The Postmaster General is not authorized to order advertisements from his department to be published in more than three newspapers in the city of Washington.—(5 : 315.)

22. The appropriation of \$35,000 for defraying expenses on account of mail depredations and for special agents, contained in the act of Congress passed 3d March, 1851, is for the fiscal year commencing on the 1st of July, 1851, and ending on the 30th of June, 1852.—(5 : 354.)

23. And as that amount is all that was appropriated for mail depredations and special agents, the Postmaster General is not authorized to apply the whole of it to the payment of special agents, to the exclusion of such expenses as may be incidental to mail depredations, but he should apportion and apply it to both objects according to his judgment and discretion.—(*Ibid.*)

(For *Franking Privilege*, see *Privilege II.*)

24. The act of March 3, 1845, providing for the transportation of the mail between the United States and foreign countries, is not repealed by the act of June 19, 1846.—(5 : 543.)

25. The municipal ordinances of a city, prohibiting the passage of railroad cars through its limits at a greater speed than six miles per hour, do not conflict with the act of Congress, March 3, 1825, relative

to the wilful obstruction of mail carriers; and the carriers of the mail on railroads are not exempt from their operation.—(5 : 554.)

26. It is the duty of the Postmaster General to return money which has been regained from mail robbers to the owner, when there is evidence, direct or circumstantial, which establishes the true ownership to a reasonable certainty.—(5 : 557.)

27. Letters in the custody of the post office cannot be attached by process issuing from a State court.—(5 : 560.)

28. H. D. Bacon, a member of the firm of Page & Bacon, of St. Louis, and also of that of Page, Bacon & Company, of San Francisco, applied to the Postmaster General for an order to the deputy postmaster of the city of New York, that all the correspondence of the firm in San Francisco, addressed to their several agents in the Atlantic and western States, and daily expected in New York by the steamer bringing the mails from San Francisco, should be delivered to him, H. D. Bacon: *Held*, that the writer of a letter has no such general property in it as to entitle him in every case to reclaim it while *in transitu*.—(7 : 76.)

29. Exceptional cases may exist of right to reclaim a letter in the analogy of the cases of stoppage *in transitu* by the law merchant; but all such cases are exceptional, each depending on its own special merits; and there is no authority in law for the issue of the order asked in this case of the Postmaster General.—(*Ibid.*)

30. The Auditor of the Treasury for the Post Office Department has direct official relation to both the Treasury and Post office Departments.—(7 : 439.)

31. Where, by a private act, the Postmaster General is required to cause to be re-examined the transportation account of a mail contractor, it is to be intended that the same shall be done in the statute routine of the accounting of the department.—(*Ibid.*)

32. The Postmaster General may lawfully contract, for any convenient time, with printers out of the city of Washington to execute such printing for the Post Office Department as may be required for use out of Washington.—(7 : 680)

(See *Contract.*)

II.—POSTAGE.

1. No charge besides that specifically provided by the 15th section of the act of 1825 can be imposed on letters or packets carried from or to New Orleans, or any other port in the United States, in any private vessel.—(2 : 312.)

2. The waters of the United States, which in law are post roads, are those between ports where steamboats are accustomed to pass in a course of habitual traffic; and the postage of letters so carried is chargeable at the same rate as for the transportation of letters over the established post roads.—(*Ibid.*)

3. According to the usage of the commercial world, a newspaper is defined to be a publication in numbers, consisting commonly of single sheets, and published at short and stated intervals, conveying intelligence of passing events.—(4: 10.)

4. The stamp act (Geo. IV, ch. 9,) declared all periodical pamphlets, or papers, published at intervals not exceeding two days, containing public news, intelligence, or occurrences, or any remarks thereon, and not containing more than two sheets, published for less than sixpence, to be newspapers.—(*Ibid.*)

5. The only indispensable requisites of a newspaper in this country are, that it be published for every body's use, in numbers; conveying news, in sheets, in a cheap form.—(*Ibid.*)

6. The New York Bank-note List is a pamphlet within the meaning of the act of 1825, and should be rated as such.—(4: 302.)

7. Letters transported on the mail routes by private carriers cannot be charged with postage.—(4: 349.)

8. Nor is it competent to detain a carpet-bag containing letters carried on a mail route contrary to law.—(*Ibid.*)

9. All that the department can do is to enforce the penalties to which all unauthorized carriers of letters are subjected.—(*Ibid.*)

10. The contents, rather than the form and dimensions of publications, should be the criterion for determining the rates of postage chargeable thereon.—(4: 407.)

11. To entitle any publication to the privileges of a newspaper, its main object and purpose must be the dissemination of intelligence of passing events; it must be issued in numbers consisting of not more than two sheets, whose superficies do not exceed 1,900 inches, at short stated intervals of not more than one month.—(*Ibid.*)

12. Little's "Living Age" is a magazine.—(*Ibid.*)

13. By the act to reduce and modify the rates of postage in the United States, and for other purposes, approved 3d March, 1851, weekly newspapers only can circulate in the mail free of postage in the counties respectively where the same are published.—(5: 371.)

14. The postage chargeable on weekly newspapers, circulated without the counties, respectively, in which they are published, should be computed from the place of their publication.—(*Ibid.*)

15. The word "periodicals," as used in a certain provision of the act, is not to be understood and construed to comprehend newspapers.—(*Ibid.*)

16. Whether the publication called "Little's Living Age" ought to be rated as a newspaper, depends upon facts not within the official knowledge of the Attorney General, and upon which he cannot express an opinion.—(5 : 375.)

17. Its size, contents, times of publication, and other characteristics, are material to a correct solution of the question, which is one of fact rather than of law, and reference should be had to lexicographers.—(*Ibid.*)

18. The act of Congress of March 3, 1855, entitled "An act further to amend the act entitled 'An act to reduce and modify the rates of postage in the United States, and for other purposes,' " takes effect at the commencement of the next fiscal quarter, generally, but not until January in regard to the particular of requiring postmasters to place stamps on pre-paid letters.—(7 : 58.)

III.—MAIL CONTRACTS.

1. Contracts to carry the mail of the United States, without stipulation as to its weight, include the whole mail accruing between the *termini* named therein, or coming into it from other routes, according to the arrangements contemplated when they are made; and if justice shall demand extra allowance on account of the increased weight, it must be sought of Congress, not of the Postmaster General.—(3 : 1.)

2. Where one of two or more contractors for transporting the United States mail shall have been guilty of a violation of the 28th section of the act of 2d July, 1836, changing the organization of the Post Office Department, and providing more effectually for the settlement of the accounts thereof, the Postmaster General may annul the contract and re-let the route according to law.—(3 : 436.)

3. Guaranties in the form prescribed by the department, but executed without inserting the time prior to which the contract is to be executed, is not a legal compliance with the law requiring guaranties to be made.—(3 : 475.)—See *Contract*.

4. Where an act of Congress gave to a railroad company credit on certain railroad iron imported, the price to be paid in four years by set off on a contract for the transportation of the mails: *Held*, that the Postmaster General may contract anew with the same company for additional service at additional compensation, without requiring that the new compensation be charged to the debt for railroad iron due under the first contract.—(6 : 668.)

PRACTICE.

1. A judgment may be obtained against an individual debtor by default, and against receivers of public moneys on return of process under an act of Congress; but as against corporate bodies the practice is regulated by the practice of the several States in such cases.—(1: 258.)

2. Where the President is satisfied that a seizure by an American vessel was in violation of the rights of a foreign nation, he may cause the Attorney General to file a suggestion of the fact in the court in which the question of seizure is pending.—(1: 504.)

3. Appeals and writs of error to the Supreme Court of the United States are founded only upon errors in points of law properly raised in the courts below for decision.—(1: 614.)

4. The proceedings to be had on an injunction granted by the district judge of Georgia against further proceedings upon a warrant of distress issued from the Treasury Department, under the act of Congress of the 15th May, 1820, should be the same as in other cases, except that no answer is necessary on the part of the United States.—(1: 694.)

5. In every action brought upon a purser's bond for violation of his duties, his duties must be specified in the declaration.—(2: 50.)

6. Judgments upon duty bonds against a surety are valid, although the suits were protracted until the principal obligor and co-surety became insolvent. Laches cannot be imputed to the government.—(2: 51.)

7. The power of the President to order the discontinuance of a suit commenced in the name of the United States should be exercised only with the greatest circumspection and care, and never in a case in which a court of the United States has taken cognizance of the matter, and thereby given countenance to the claim.—(2: 53.)

8. Generally, actions in behalf of the government are brought in the name of the United States, not of any public officer.—(7: 50.)

9. The form of procedure in the district courts of the United States is that of the respective State, subject to discretionary change on the part of the courts of the United States.—(*Ibid.*)

10. Upon certain charges, Captain S. W. Downing, of the navy, was tried by court-martial and sentenced to be dismissed; which sen-

tence was approved by the President and duly carried into effect by the Secretary of the Navy. After this, Captain Downing, in a communication to the Secretary of the Navy, claimed that the proceedings in the case were illegal and void, because of the following facts: The court was composed of thirteen members, six of whom were junior in rank to Captain Downing, and six of them senior to him, exclusive of the president, who was also his senior. During the trial, Captain Forrest, one of the members of the court, was absent two days, by reason of sickness. On his reappearing to resume his seat, it was decided by the court that he could not do so, and the case proceeded to conclusion without the further presence of Captain Forrest: *Held*, that the dismissal is a consummated fact, whether the sentence was lawful or not, and if the party be restored to the service it can only be by renomination to the Senate and reappointment.—(7: 98.)

11. In the present stage of the case, no question on the proceedings of the court can be raised, save that of nullity of sentence for want of jurisdiction.—(*Ibid.*)

12. It is doubtful whether the court had lawful authority to exclude Captain Forrest under the circumstances stated. But his exclusion does not affect the proceedings of the court with nullity, and if it were an irregularity, should have been taken advantage of before the sentence, or at least before the approval of the sentence by the President.—(*Ibid.*)

13. It is a frequent error on the part of the patentees of new inventions, arising either intentionally, or from want of logical precision of thought, to employ language of claim generic instead of specific, and so of undue comprehension; which improper generality of claim is the origin of many of the questions of interference, and will be reduced to its proper specific limits by judicial analysis and exposition.—(7: 133.)

14. The patent of Cadwallader Evans would seem in terms to embrace any use of fusible alloys in connexion with infusible rods to open the valve or move the indicator of a steam-engine; but cannot cover the use of such alloy, and the particular machinery for using it, previously suggested by Professor Bache, and made public in a report of the Franklin Institute.—(*Ibid.*)

15. A foreign *mandat d'arrêt*, setting forth the offence of a fugitive from the justice of a foreign country, within the terms of any treaty of extradition, such mandat coming through the proper political channel, is sufficient foundation for the issue of the President's war-

rant authorizing the institution of proceedings before the judicial authorities of the United States.—(7: 285.)

16. Where a general court-martial, duly organized by order of the Secretary of War, was, after report, required by him to reassemble to revise its sentence, and on reassembling two of the original members were absent from whatever cause, but a legal quorum of the court still remained: *Held*, that the absence of the two members at the reassembling of the court did not impair its jurisdiction, or otherwise affect its power to revise the sentence; and that it still was the same continuous and competent court as when it first assembled under the order of the Secretary.—(7: 338.)

17. Every applicant for a patent has the right to withdraw his application, and demand the restoration of two-thirds of the thirty dollars duty-money at any period of time, at least, anterior to the making oath anew and proceeding upon the ulterior stages of inquiry after adverse report by the Commissioner.—(7: 390.)

18. A specification of charge is good, and will support the finding and sentence upon it, with or without descriptive designation of the quality of the imputed criminal act, provided it appear that the facts alleged and proved constitute, in any point of view, the offence charged.—(7: 601.)

PREROGATIVE.

1. Where the estate of any deceased debtor in the hands of executors or administrators shall be insufficient to pay all the debts due from the deceased, the debt due the United States shall be first satisfied; but whether the United States have priority over mortgages executed on land of the debtor, whilst a debtor to the United States, *quere*.—(1 : 414.)—See act March 3, 1797.

2. The United States have the right to retain moneys awarded, under the French treaty of 1831, to a firm of which one member is indebted to the government upon a bond for duties on goods imported for the firm, and to apply the same upon the bonds.—(3 : 163.)—See *United States vs. Lyman*, 1 Mason, 482.

3. Where a receiver of public moneys at Kalamazoo received in payment for public lands the notes of a specie-paying bank that afterwards suspended specie payments, and then took from the bank a draft on another bank which was returned dishonored, and a receiver of assets having been appointed under the laws of Michigan, with whom the receiver of public moneys filed a claim for this debt: *Held*, that, notwithstanding the acts of the latter, the legal priority of the United States to payment still exists.—(3 : 625.)

4. The validity of the bond of a receiver is not affected by his discharge as a bankrupt, nor are his sureties discharged or released thereby.—(4 : 253.)

PRESENTS.

1. The expense of recasting cannon, &c., to be presented to the Imaum of Muscat in return for presents received, may be defrayed from the appropriation for the contingent expenses of foreign intercourse.—(4 : 358.)

2. And as it has been the practice of our government, from its earliest history, to interchange presents with the semi-barbarous nations of Asia and Africa, and as the Executive is vested with a discretion respecting the manner in which friendly relations with them can be best maintained, it follows that if he shall be of opinion that the public interests will be promoted by tendering a present in return for one received he may legally do so, and cause the expense thereof to be defrayed from funds thus placed at his disposal.—(*Ibid.*)

PRESIDENT OF THE UNITED STATES.

I. GENERALLY.

II. AS TO THE EXECUTION OF THE LAWS.

1. GENERALLY.

2. POWER AS TO SUITS AND PROCESSES IN WHICH THE UNITED STATES ARE INTERESTED.

III. APPOINTING POWER.

IV. PARDONING POWER.

1.—GENERALLY.

1. Sovereigns do not interfere with the regular course of the administration of justice where a foreigner is a party, until he shall have gone to the highest court with his case.—(1 : 25.)

2. The President will not interfere with an action against a foreign commissioner where there may be a legal trial.—(1 : 81.)

3. The general power given to the President to lease the saline on the Wabash, carries with it all the incidental powers necessary to a settlement with the lessees to transfer the kettles to a subsequent lessee, or to a former one, for a debt growing out of a lease of the works.—(1 : 352.)

4. It is the duty of the President to exercise a general supervision over the subject of the appropriation of the public grounds in the city of Washington; and as the right to occupy and improve any of these grounds depends upon whether the improvements are for public purposes, so the power of the President to assent to improvements depends upon whether they are for public purposes and are useful.—(1 : 369.)

5. The resolution of the corporation of Washington city, proposing to improve a part of Judiciary square, by erecting thereon a city hall, is to appropriate the public grounds for both a *public* and a *useful* purpose, and may be approved by the President; provided, that the quantity of ground required neither exceeds nor falls short of the purpose.—(*Ibid.*)

6. The assent of the President to acts of the corporation of Washington should be expressed in the same manner as his assent is expressed to acts of Congress.—(*Ibid.*)

7. As commander-in-chief of the navy and army, the President can modify, suspend, or rescind an order issued to the marine corps.—(1: 380.)

8. He will not interfere in a matter of private and individual litigation.—(1: 405.)

9. The power of the President over accounts is only appellate in its nature, to be exercised after the accounting officers shall have performed their duty in the matter.—(1: 597.)

10. The report of a committee accompanying a bill, which has passed into a law, may be referred to as well by the President whilst exercising his revising power as by the accounting officers in their examination of the accounts submitted, for the principles to govern settlements under such law.—(*Ibid.*)

11. He is not authorized to cause public lots in Washington to be filled up, or stagnant water thereon to be removed.—(1: 615.)

12. It is a rule which each administration has prescribed to itself to consider the acts of its predecessors conclusive, so far as the Executive is concerned. If a decision in a case, made eight years ago, under a former Executive, is open for review and revisal, the same principle will open decisions made during the presidency of Washington, and keep the acts of the Executive perpetually unsettled and afloat.—(2: 8.)

13. The controversy arising under the treaty of Indian Springs, between the people of Georgia and the Creek nation, having been adjusted by President Monroe, the award made by him must be regarded as final; the power of the President over the same is *functus officio*.—(2: 110.)

14. The President has no power to order moneys paid into the treasury upon judgment and execution, upon the penalty of a bond, to be refunded several years after the payment was made.—(2: 189.)

15. He cannot cause a quarantine to be established at Alexandria.—(2: 263.)

16. Nor can he order the delivery of diamonds and precious stones of the Princess of Orange, referred to in the note of Chevalier Huygens.—(2: 452.)

17. Nor will he be justified in directing the surrender of the person upon whom a part of the stolen articles may have been found, as there is no stipulation between the two governments for the mutual delivery of fugitives from justice.—(*Ibid.*)

18. Where an account has been settled, and a suit commenced on the balance found due, the President cannot enter into the correct-

ness of the account for the purpose of repairing any errors which the accounting officers may have committed.—(2 : 507.)

19. He cannot order the sale of a square of land in the city of New Orleans. The act of 1820 refers to lands of a different description.—(2 : 586.)

20. Payment of the claims of the citizens of Georgia under the Creek treaty of 1821, and the law concerning them passed June 30, 1834, may be made by the President to the State of Georgia for the use of the claimants.—(2 : 691.)

21. The President does not possess the power to order any portion of a specific appropriation for the mileage and pay of members of the House of Representatives to be transferred to the contingent fund of that body.—(3 : 442.)

22. He cannot lawfully interpose an opinion respecting a claim until the accounting officers shall have passed upon and settled all the items of the account.—(3 : 500.)

23. He may cause a military officer to be stricken from the rolls, without a trial by a court-martial, notwithstanding a decision in his favor by a court of inquiry ordered for the investigation of his conduct.—(4 : 1.)

24. He has power, under the act of 2d July, 1836, to direct appropriations for one fortification to be transferred to another ; the provision therefor being construed to be perpetual.—(4 : 110.)

25. He has no authority to cause buildings to be erected for the reception of transported Africans.—(4 : 139.)

26. Nor to remit the forfeiture of a bail bond.—(4 : 144.)

27. Nor has he power to prevent the exhibition of Indians.—(4 : 144.)

28. Nor, since the act of 1842, can he direct transfers in the Navy Department of moneys appropriated to one particular branch to the account of another branch of expenditure.—(4 : 266.)

29. A subject once disposed of by the proper executive department, except under peculiarly strong circumstances, ought to be regarded as settled.—(4 : 341.)

30. The President will not undertake to revise the decision of the Commissioner of Pensions.—(4 : 515.)

31. The power of the President to dismiss an officer from the public service, without the consent of the Senate, was affirmed by Congress soon after the adoption of the Constitution, and has since received the sanction of every department of the government.—(4 : 603.)

32. The President is not authorized to direct a surplus of an appro-

priation for the Winnebago Indians to be transferred to meet expenses in the Department of the Interior for which the appropriation is inadequate, or for which none had been made.—(5 : 90.)

33. Where several midshipmen had been dismissed by the sentence of a naval court-martial, which was approved by President Taylor, who afterwards reconsidered his approval and announced his determination to restore them, but failed to do so before his death, it is within the competency and power of the present Executive to restore them to their former rank in the navy, provided it can be done without increasing that class of officers beyond the number limited by law.—(5 : 259.)

34. The President is under no official obligation to interfere with the disputed question as to the legal effect of a decision of a former Secretary of the Treasury, concerning the extent of the grant of land on the Des Moines river to Iowa.—(5 : 275.)

35. Nor to interfere with the subject-matter of the memorial of Fellows & Co., who have invoked the aid of the Executive to compel the Secretary of War to file the report of the arbitrators between the Seneca Indians and themselves.—(*Ibid.*)

36. He is invested with authority to remove the chief justice of the Territory of Minnesota from office ; and it is his duty to do so if it appear that he is incompetent and unfit for the place.—(5 : 288.)

37. That the President has the constitutional power to remove civil officers appointed and commissioned by him, by and with the advice and consent of the Senate, where the Constitution has not otherwise provided by fixing the tenure during good behavior, has long been settled beyond controversy or doubt.—(*Ibid.*)

38. The power is reposed in the President in order that he may enforce the execution of the laws through the agency of competent and faithful subordinate officers.—(*Ibid.*)

39. The President cannot entertain appeals in matters of account either on the application of the Commissioner of Customs, the Comptroller, Auditors, or individual claimants.—(5 : 630.)

40. The President has power to order a nolle prosequi in any stage of a criminal proceeding in the name of the United States.—(5 : 729.)

41. The President advised not to remove the marshal of Ohio on the *ex parte* statements of the complainants, but to enclose the papers to the district attorney of Ohio, with instructions to proceed or not, as the evidence shall direct him.—(5 : 732.)

42. Except to avert extreme injustice, which cannot be otherwise

avoided, the Executive should not interfere in a civil suit between two citizens.—(5 : 742.)

43. In the case of Captain Bell, who is under arrest at the suit of Fairbanks, in Florida, the subject may be referred to Governor Jackson, or his representative, to ascertain the extent of the Executive power under the laws as they exist in the premises, and to exercise the power, or report to the President for further consideration.—(*Ibid.*)

44. The President and subordinate executive officers, whether military or civil, possess a limited power to establish regulations, provided these be in execution of, and supplemental to, the statutes and statute regulations ; but not to repeal or contradict existing statutes or statute regulations, nor to make provisions of a legislative nature.

Hence, the "System of Orders and Instructions" for the navy, issued by President Fillmore as "Executive of the United States," February 15, 1853, is without legal validity, and in derogation of the powers of Congress.—(6 : 10.)

45. It is in the discretion of the President whether or not to require bonds of an officer of the engineer corps employed as disbursement agent of the government.—(6 : 24.)

46. In general, where the Constitution or an act of Congress requires the President to do a thing which requires the expenditure of money, he may lawfully do it, or contract to have it done, in the absence of any adequate appropriation for the object, and the cost of the thing becomes a lawful charge on the government.—(6 : 26.)

47. Where, by the special provision for a particular work commenced and in progress, it was provided that nothing in the act should be so construed as to authorize any officer of the government to bind the United States by contract beyond the amount of existing appropriation : *Held*, that if the public interest required the President to make a contract for the work exceeding such amount he might lawfully do so, subject to the chance of future appropriations for the object, without which the contract would not bind the United States.—(*Ibid.*)

48. A special provision of law enacted that "all contracts now existing" in relation to a given object, "not made according to law, are hereby cancelled : " *Held*, that, under this law, the President is to judge whether such contracts were made "not according to law ; " that the law does not determine this point ; and query whether it could be determined by act of Congress.—(*Ibid.*)

49. The unlimited discretion of the President as to the quantity of land to be reserved for public purposes, conferred by the 14th section

of the act of September 27, 1850, has been taken away by the 9th section of the act of February 14, 1853, which provides, "That all reservations heretofore as well as hereafter made, &c., shall, for magazines, arsenals, dock-yards, and other needful public uses, except for forts, be limited to an amount not exceeding twenty acres for each and every of said objects at any one point or place, and for forts to an amount not exceeding six hundred and forty acres at any one point or place."—(6 : 156.)

50. A legislative act of the British colony of New South Wales, enacting that certain proceedings may be had in the court as to deserting seamen of any foreign country in that colony, provided its government assents: *Held*, that the President cannot give such assent on the part of the United States, but that it can only be done by treaty or act of Congress.—(6 : 209.)

51. In granting his mandate, at the request of a foreign government, for the purpose of commencing proceedings in extradition, the President does not need such evidence of the criminality of the party accused as would justify an order of extradition, but only *prima facie* evidence.—(6 : 17.)

52. A head of department, advertising according to law for proposals for stationery, is the competent and only judge of the matters of fact involved in the acceptance or rejection of any of the proposals.—(6 : 226.)

53. In a matter which the law confides to the pure discretion of the Executive, the decision by the President or proper head of department of any question of fact involved is conclusive, and is not subject to revision by any other authority in the United States.—(*Ibid.*)

54. The President has no power to afford pecuniary redress to a party who alleges abuse of power against him by the attorney of the United States for one of the Territories.—(6 : 392.)

55. The original reservation in the plat of the city of Washington for the President's mansion extended south to the bank of the stream called Goose creek.—(6 : 444.)

56. There is no public street lawfully existing across the reservation south of the President's mansion.—(*Ibid.*)

57. After sentence of an officer of the army by a court having jurisdiction has been approved and executed by one President it cannot be revised by his successor.—(6 : 506.)

58. An act within the jurisdiction of the President of the United States, lawfully done by him, cannot be revised by one of his successors.—(6 : 603.)

59. A deed of land purporting to be by a certain Indian, was approved by a former President, proves not to have been executed by him: *Held*, that the new President may treat that deed as nullity, and approve a new deed duly executed by such Indian.—(6: 711.)

60. The President has no authority to release the sureties on a bond given to the United States by a marshal for the faithful discharge of the duties of his office.—(7: 62.)

61. As a general rule, the direction of the President is to be presumed in all instructions and orders issuing from the competent department.—(7: 453.)

62. Official instructions issued by the heads of the several executive departments, civil and military, within their respective jurisdictions, are valid and lawful, without containing express reference to the direction of the President.—(*Ibid.*)

II.—AS TO THE EXECUTION OF THE LAWS.

1.—GENERALLY.

1. The President has no constitutional power to interpose to prevent the arrest of a French consul general.—(1: 77.)

2. He may employ military force to remove from the *batture* or alluvial lands, in New Orleans, persons who have taken possession of them since the act of 3d March, 1807.—(1: 164.)

3. He will issue death warrants in order to give effect to the laws, in cases where they are necessary by the practice of the State in which the sentence is passed.—(1: 228.)

4. He has no authority to cause an arrest to be made except upon probable cause, supported by oath or affirmation.—(1: 229.)

5. The President may issue his proclamation against an offender who has once been regularly arrested and made his escape; for, in such case, the regularity of the arrest implies that the probable cause has been furnished on oath, according to the Constitution—(Amend. art. 4.—*Ibid.*)

6. Where, in his opinion, a court-martial erred on the first trial in excluding proper testimony he can order a new trial.—(1: 233.)

7. The foreign intercourse fund being under the direction of the President, he may advance to a minister going from the United States to Chili such part of his salary as he shall deem necessary to the proper fulfilment of public engagements in respect to him.—(1: 620.)

8. The President is not required to audit and allow public accounts, but to see that the officers assigned to that duty perform it faithfully.

The settlement of an account by the proper accounting officers is *final and conclusive*, so far as the Executive is concerned.—(1 : 624.)

9. There is no law which renders the decision of the court of Georgia upon a claim of the marshal of that State for supporting negroes taken from a vessel brought in for adjudication, under the laws prohibiting the slave trade, binding on the Executive, so as to make it the duty of that department to pass an account which it considers unreasonable and unjust.—(1 : 635.)

10. The President cannot interpose in the settlement of accounts by the Comptroller, and require him to allow a credit to an individual in the settlement.—(1 : 636.)

11. The President has imposed on him the duty of fitting out and directing the employment of the public armed vessels; and where Congress fails to provide for disbursements indispensable to the performance of this branch of public duty, he may make such allowances to officers acting in higher stations than those to which they were appointed by their warrants or commissions.—(2 : 284.)

12. He has power to expel intruders from the lands secured to the Chickasaws east of the Mississippi by military force, though such lands have been leased by them.—(3 : 255.)

13. He may direct a naval court-martial to reconsider their judgment in cases where his previous sanction is necessary for the execution of such judgment.—(4 : 19.)

14. He is required to see that the laws are faithfully executed, but is not obliged to execute them himself.—(4 : 515.)

15. The law has designated the officer to decide upon applications for pensions, and has provided for no appeal to the President; wherefore he will not undertake to revise the decisions of the Commissioner.—(*Ibid.*)

16. Although it is the duty of the President to take care that the laws are faithfully executed, it is not, in general, judicious for him to interfere with the functions of subordinate officers further than to remove them for any neglect or abuse of their official trust.—(5 : 287.)

17. He has no proper authority to employ counsel, at the expense of the government, to advise, protect, and defend the marshal of the southern district of New York, in cases arising under the fugitive slave law.—(*Ibid.*)

18. In general, it is not the duty of the United States to assume the legal defence by counsel of marshals and other ministerial officers of the law, where these are sued for official acts.

But the President of the United States, in the discharge of his con-

stitutional duty to take care that the laws be faithfully executed, may, in his discretion, well assume, in certain cases, the defence of such ministerial officers.—(6: 220.)

19. The right to do this cannot be limited to cases in which the *property* of the United States is concerned, but extends to other cases, more especially those affecting the constitutional security of the government, whether in the relation of the United States to foreign governments, or that of the States among themselves, or that of the States to the United States.—(*Ibid.*)

20. When combinations exist among the citizens of one of the States to obstruct or defeat the execution of acts of Congress, and the question of the constitutionality of such laws is made in suits against a marshal of the United States, the President is justified in assuming his defence on behalf of the United States.

Hence, a marshal being harassed with suits on account of his official action in the extradition of a fugitive from service, his defence may well be undertaken by the United States.—(*Ibid.*)

21. Under the treaty between the United States and Great Britain of June 5th, 1854, the President cannot issue his proclamation giving effect to the treaty as to Canada alone in anticipation of the action of New Brunswick, Nova Scotia, and Prince Edward's island; nor until he shall have received evidence, not only of the action of those provinces, but also of the imperial parliament.—(6: 748.)

22. A provision of an act of Congress, as it stands on the rolls, enacts that a certain sum of money be paid to R. W. T., according to contract between him and the Menomonee Indians; but, in fact, as the act passed to be enacted it contained the following proviso, namely: "Provided that the same be paid with the consent of the Menomonees:" Held, that, in his discretion, the President may abstain from proceeding to act under the general enactment, unless with consent of the Menomonees, and submit the matter to Congress.—(7: 166.)

23. The President of the United States has lawful authority summarily to remove intruders from lands duly held by the government for the site of a light-house or for any other competent purpose.—(7: 534.)

2.—POWER AS TO SUITS AND PROCESSES IN WHICH THE U. STATES ARE INTERESTED.

1. A vessel under arrest, to prevent her from cruising against belligerent powers, may be discharged on the order of the President, communicated to the marshal having her in custody.—(1: 48.)

2. If the commandant of the island of Amelia were arrested in Georgia at the suit of an individual, the United States have no power to interfere ; if, however, the suit be a public prosecution in the name of the State of Georgia, or of the United States, it will be proper for the Executive to interfere.—(1 : 68.)

3. The President has no power to direct a person indicted for cheating the accounting officers by means of forged papers supporting fictitious losses to be let to bail, or discharged on his own recognizance.—(1 : 213.)

4. Nor has he power to discharge public debtors imprisoned on *mesne process*, but only debtors imprisoned on execution.—(1 : 231.)

5. He ought not to interfere with the judiciary whilst it is in the regular course of giving construction to acts of Congress, by directing a *nolle prosequi* of a proceeding against a British vessel for a breach of the navigation act of 18th April, 1818, after the district court has condemned her to forfeiture.—(1 : 366.)

6. Where it is claimed by a foreign minister that a seizure made by an American vessel was a violation of the sovereignty of his government, and he satisfies the President of the fact, the latter may, where there is a suit pending for the seizure, cause the Attorney General to file a suggestion of the fact in the cause, in order that it may be disclosed to the court.—(1 : 504.)

7. The power of the President to order the discontinuance of a suit commenced in the name of the United States is a high and delicate one, to be exercised only with the greatest circumspection and care ; and never in a case in which a court of the United States free from suspicion of impurity, has taken cognizance of the matter, and thereby given countenance to the claim.—(2 : 53.)

8. The case of the United State *vs.* the mayor and aldermen of New Orleans, commenced by petition for an injunction to restrain them from selling unoccupied land, (the corporation claiming property,) is not a proper case for the interference of the President.—(*Ibid.*)

9. When an officer of the army or navy is sued on account of acts alleged to have been performed in the line of his duty, the Executive is to judge, in his discretion, whether the case is one of which the defence is to be assumed by the government.—(6 : 75.)

III.—APPOINTING POWER.

1. The President cannot appoint a commissioner to make a treaty

with Indians, for the purpose of extinguishing their title to lands within the United States, without the advice of the Senate.—(1: 65.)

2. He has power to nominate a brigadier general of the militia of the northwest territory.—(1: 165.)

3. Where the tenure of an office is not defined, a commission may be given to hold the office during the pleasure of the President.—(1: 212.)

4. The President has power to fill, during a recess of the Senate, by temporary commission, a vacancy that occurred by expiration of commission during a previous session of that body, the term in the Constitution, “may happen during the recess,” being equivalent to “*may happen to exist* during the recess,” without which interpretation it could not be executed in its spirit, reason, and purpose.—(1: 631.)

5. The general provisions of the 24th section of the judiciary act of 1789 confer no authority upon the President to appoint marshals in districts created subsequently to the passage of that law.—(2: 253.)

6. The President has no authority *per se*, except in the recess of the Senate, to appoint any permanent navy agents other than those enumerated and referred to in the act of 3d March, 1809.—(2: 320.)

7. The appointment of a navy agent during the recess of the Senate, made in the case of a vacancy occurring during the recess, is in the exercise of the constitutional power of the President, and not by force of the act of 3d March, 1809.—(2: 333.)

8. The President having, as commander-in-chief, satisfied himself that an exchange of artillery and marine corps is consistent with the good of the service, and that the officers to be transferred have respectively assented to it, will then take care not to prejudice the rank of any officer of the regiment to which the transfer is made, by nominating the officers transferred to take the same rank in that regiment which was held by the officers whom he substitutes.—(2: 335.)

9. The exercise of the power to fill vacancies during a recess of the Senate is not limited to those which occur during recesses.—(2: 525.)

10. The Constitution authorizes the President to fill vacancies that may happen during the recess of the Senate, even though the vacancy shall occur after a session of the Senate shall have intervened.—(3: 673.)

11. Under the act of 27th February, 1801, he is authorized to make an original appointment of a justice of the peace during a recess of the Senate for the District of Columbia.—(4: 174.)

12. After a confirmation by the Senate of an appointment, the President may, in his discretion, withhold a commission.—(4: 218.)

13. The President cannot appoint district judges, attorneys, and marshals, during a recess of the Senate, for newly admitted States, where the offices were created and took effect during the session of that body.—(4: 361.)

14. If vacancies are known to exist during the session of the Senate, and nominations are not then made to fill them, they cannot be filled by the Executive during the subsequent recess.—(*Ibid.*)

(See *ante*, 9, 10.)

15. The act of 17th June, 1844, restrained the further exercise of executive authority to appoint commissioners to examine claims under the treaty of New Echota, and he cannot now constitute a new board without plainly disregarding the will of Congress in the premises.—(4: 418.)

16. The President is authorized to fill up vacancies in the offices of the postmasters whose appointment was devolved upon him by the act of 2d July, 1836, which happen to exist during a recess of the Senate.—(4: 523.)

17. Even though the vacancy occurred before the session of the Senate, if that body, during its session, neglected to confirm a nomination to fill it, the President may fill it by a temporary appointment, and public considerations seem to require him to do so.—(*Ibid.*)

(See *Appointment.*)

18. Appointments, provided for by act of Congress merely in general terms, must be made by the President by and with the advice and consent of the Senate.—(6: 1.)

19. In case of appointments and removals by the President, where the removal is not by direct discharge, or an express vacating of the office by an independent fact, but merely by the operation of a new commission or appointment, then the virtue of the old commission ceases only when notice of the new commission is given to the outgoing officer, either by the President, or by the new officer exhibiting his commission to the old, or by other sufficient notification.—(6: 87.)

IV.—PARDONING POWER.

1. The President may mitigate a sentence of death pronounced by a naval court-martial, by substituting a milder punishment in its stead.—(1: 327.)

2. He cannot discharge a debtor to the United States, imprisoned on a warrant of distress, issued from the Treasury Department by the letter of the act of March 3, 1817; yet where the debtor will confess judgment, and will submit to a *capias* thereon at once, and to be

thereby brought within the description of the act, the President may legally discharge him.—(2: 285.)

3. The power of the President over a sentence of court-martial is a power over the whole of it, and he may approve, reject, or mitigate the same at pleasure.—(2: 287.)

4. In exercising this revisory power over sentences, the President may consider the provocation, if any, which led to the offence, and all the facts and circumstances which properly bear upon the justice or injustice of the sentence.—(*Ibid.*)

5. He has no power (in the case presented) to remit the forfeiture of a bail-bond.—(4: 144.)

6. He is invested with authority to remit judgments of forfeiture pronounced against vessels, their tackle and apparel, for infractions of the act of 1818, prohibiting the slave trade.—(4: 573.)

(See *Pardons.*)

7. It is not competent for the President, in the exercise of the pardoning power, to remit pecuniary penalties attached to an offence, unless those penalties accrue to the United States.—(5: 532.)

8. The punishment in the District of Columbia, for the unlawful transportation of slaves, by the laws of Maryland applicable to the District, is by fine, which the statute appropriates, and cannot be remitted by the President.—(*Ibid.*)

9. The President, in the exercise of the pardoning power vested in him by the Constitution, may remit penalties and fines adjudged, in the circuit court of the District of Columbia, against parties convicted of aiding the escape of slaves from their masters, and discharge them from imprisonment; or he may merely discharge them from imprisonment without remitting the fines.—(5: 579.)

10. The President of the United States has the constitutional power to pardon as well before trial and conviction as afterwards; but it is a power only to be exercised with reserve, and for exceptional considerations.—(6: 20.)

11. Whether the President can lawfully discharge a prisoner confined for non-payment of a penalty accruing as indemnification to the individual injured by the prisoner's act, *dubitat*.—(6: 615.)

12. In the early period of the government, there was irregularity in the practice regarding capital sentences under acts of Congress, that is, upon the point whether the convict should be executed on a warrant of the court by which he was tried, or of the President.—(7: 561.)

13. But, in the administration of President Jackson, it was deter-

mined, and made known by circular from the office of the Attorney General, in all cases to leave the execution of the sentence of the law to the discretion of the court, in confidence that the court will give a reasonable time for the interposition of executive clemency in cases where it ought to be interposed.—(*Ibid.*)

14. The President of the United States alone has the power to pardon offences committed in a territory in violation of acts of Congress.—(*Ibid.*)

15. He cannot restore a convict to the rights of citizenship any further than the operation of a general pardon.—(7: 760.)

PRINCIPAL AND AGENT.

1. When a commissioned officer or other agent of the United States makes a contract with any person for their use and benefit, and with due authority of law, such officer or other public agent is not responsible to the party, whose only remedy is against the government.—(7: 88.)

2. But, in making contracts with any one claiming to act for the government, it is the duty of the party contracting to inquire as to the authority of such agent or officer; without which it is doubtful whether the contract affects the government.—(*Ibid.*)

3. If a public officer, however, make a government contract without authority, and which therefore does not bind the government, such officer is himself personally responsible to the contracting parties.—(*Ibid.*)

4. But a public officer or other agent, though contracting for the government, may, if he see fit, make himself the responsible party, either exclusively or in addition to the government.—(*Ibid.*)

5. Heads of departments or of bureaus, and other certifying officers of the government, cannot certify by delegation, unless when specially authorized so to do by act of Congress.—(7: 594.)

PRINTING.

1. The person entitled to the printing of the Treasury Department, generally, under the late biddings, should execute all the printing required by it, whether on paper or parchment, notwithstanding the error of the clerk in erroneously stating to the bidder for parchment that his bid for the printing of it was accepted.—(3 : 469.)

2. The act of 3d March, 1845, concerning the advertising which the heads of departments and bureaus are required to do, does not entitle the National Era, weekly newspaper, to any part of the printing.—(5 : 144.)

3. The clause permitting a third paper to be selected requires that the publications therein shall be made equal to the others as to frequency.—(*Ibid.*)

4. The opinion previously given upon the construction of the act of 3d March, 1845, relative to publications in newspapers by the executive departments, is confirmed.—(5 : 566.)

5. The requisitions of the Superintendent of Public Printing are to be made by him directly on the Secretary of the Treasury, and do not require to be approved by the Secretary of the Interior.—(6 : 228.)

6. The provisions of the act of February 26, 1853, regulating the fees of clerks of the courts of the United States and other officers, which provides, among other things, a price for publishing any statute, notice, or order required by law or by the lawful order of any court, department, bureau, or other person in any newspaper, applies only to such a publication in the case of judicial proceedings, and not to the publication of laws and treaties by the Secretary of State.—(6 : 502.)

7. Indian treaties are only required to be printed for promulgation in one newspaper, and that in the State or Territory to which the subject-matter of the treaty belongs.—(6 : 627.)

8. The Postmaster General may lawfully contract, for any convenient time, with printers out of the City of Washington, to execute such printing for the Post Office Department as may be required for use out of Washington.—(7 : 680.)

PRIVATEER.

(SEE REPRISAL.)

PRIVILEGE.

I. GENERALLY.

II. FRANKING PRIVILEGE.

I.—GENERALLY.

1. The act of the legislature of the Northwestern Territory, authorizing Briggs and another to erect a bridge over Will's creek, does not confer an *exclusive* privilege.—(2 : 107.)

II.—FRANKING PRIVILEGE.

1. Postmasters cannot lawfully receive to be conveyed in the mail any packet weighing more than three pounds in any case whatever, except such as are specially provided for in the act of December 19, 1821, and the joint resolution of January 13, 1831.—(3 : 164.)

2. The taking a seat in a special session of the Senate, called and held for executive business merely, and without any contemporaneous meeting of the House of Representatives, is not such a taking of a seat in Congress as will entitle a senator to the exercise of the franking privilege.—(3 : 171.)

3. The franking privilege of senators and representatives in Congress commences with the term for which they are respectively elected, or from the period of their election, in cases where that occurs, after the commencement of a term.—(5 : 358.)

4. The privilege is given to them as members of Congress during their terms of service, without any reference to the time when they take their seats or the oath of office.—(*Ibid.*)

5. So far as relates to this purpose, they are members of Congress by their election and acceptance.—(*Ibid.*)

PRIZE.¹

1. It is reasonable, as applicable to all nations, to permit a portion of a prize cargo to be sold under the actual superintendence of our public officers for reparation of the prize-ship; and as to France it is within the 14th article of the treaty of 1778.—(1: 67.)

2. The prize-ship should be permitted to sail whenever the captors wish; a deception on the revenue officers affords no ground for detaining it.—(*Ibid.*)

3. A captured vessel must be brought within the jurisdiction of the country to which the captor belongs before a regular condemnation can be awarded.—(8.)

4. Where a brig captured off Tripoli as prize of war by a part of a squadron, and condemned, was afterwards taken by the commodore at a valuation and placed in the service of the United States: *Held*, that the captors were entitled to their prize interest of the government, and that the other moiety should be applied to the navy pension fund.—(1: 186.)

5. Where a captured fleet was condemned as a prize of war and afterwards purchased by the President for \$255,000, under an act of Congress directing such purchase, and the distribution of that amount between the captors and their heirs, it was not intended to alter the mode of distribution, nor to deprive the widow of a seaman slain in the struggle from claiming and receiving the same share that she would have received had the prize been sold under a decree of court.—(1: 403.)

6. The profits of a capture made by individuals, acting without a commission, inure to the government, but it has not been the practice to exact them. It has been their practice to recompense gratuitous enterprise, courage, and patriotism, by assigning the captors a part, and sometimes the whole of the prize.—(1: 463.)

7. The 4th section of the act of 3d March, 1800, refers to the prize

¹ The prize law of Great Britain has continued to be our prize law, so far as it is adapted to our condition, and has not been varied by any power competent to change it; and, consequently, decisions of questions of prize in that country will be received with respect here, though not binding as authority.—(Thirty hogsheads of sugar *vs.* Boyle, 9 Cranch, 191.)

law for the proportion of the salvage which the officers and crew shall take in a given case, as well as for the mode in which the share, so taken by them, shall be distributed.—(1: 594.)

8. The rules for the distribution of prize money are: that the whole of the prize belongs to the captors when the vessel captured is of equal or superior force to the vessel making the capture; and when of inferior force, the prize is directed to be divided equally between the United States and the officers and men making the capture.—(*Ibid.*)

9. As the act of 14th July, 1832, does not expressly authorize the President to depart from the general regulations on the subject of prize-money, the act of 1800, for the better government of the navy, must be taken as a guide in the execution of the law.—(2: 656.)

10. Where an American vessel had entered and cleared from a port under blockade, and, whilst returning to New Orleans, was captured by a vessel belonging to the French blockading squadron, from which the captain of the former rescued her and brought her into the port of New Orleans to which he was destined; and demand subsequently being made on the Executive to deliver up the vessel and cargo, both on account of the said breach of blockade and the rescue: *Held*, that the captors have no right of property in said vessel and cargo; and that the liability of the vessel to condemnation, if it ever existed, has ceased by the termination of her voyage at the port of her destination.—(3: 377.)

11. Distribution of certain moneys appropriated by Congress as prize-money, among the officers and crew of two gun-boats, must be made in the proportions and to the persons pointed out by the general laws and regulations of the navy applicable to the subject.—(4: 551.)

12. The act abolishing the office of prize agent, and requiring all incumbents thereof to deposit all moneys in their hands in the treasury of the United States, divested prize courts of all powers to distribute prize moneys, and relieved the agents of all responsibility to comply with their orders directing distribution made subsequent to the passage of the law.—(5: 142.)

13. Where a prize agent refuses to deposit certain prize moneys in the treasury, in conformity with the act of 3d March, 1849, on pretence that the act is not applicable to the case, and the Attorney General has decided that he ought to make the deposit, it is proper to institute proceedings in the prize court to compel a compliance with the law.—(5: 333.)

PRIZE AGENT.

(SEE PRIZE, 12, 13.)

14. It is the duty of prize agents to deposit all moneys in their hands in the treasury of the United States.—(6: 197.)

PROCESS.

1. It is lawful to serve either a civil or criminal process upon a person on board a British man-of-war lying within our territory.—(1: 87.)

2. Private or extra judicial caveats lodged with the commissioner of loans, when founded on some specific claim or lien on the stock created by the proprietor himself, ought to be respected. So, also, the process of the courts should be respected.—(2: 178.)

3. An original bill, in the nature of a bill of review, is the proper proceeding to set aside a decree obtained by the production of forged documents.—(2: 331.)

4. Indictment is the proper proceeding to punish the cutting, &c., of live-oak reserved for naval purposes; under the first section of the act, and under the second section, indictment and information.—(3: 494.)

5. Punishment by the House of Representatives for an assault and battery on the person of one of its members is no bar to an indictment and conviction in the district court for the same act.—(2: 655.)

6. The punishment of General Houston by the House was for a breach of privilege and for contempt of the House; but the indictment and conviction were for a violation of the public law.—(*Ibid.*)

7. In the States where the garnishment or trustee process is in general use, it may be resorted to to compel the appearance of officers of the army and other agents of the government before the civil tribunals to account for money due from them where they have become personally liable, and where they hold funds for the particular use of the Executive should not consent to place the government of the

United States, which is not liable without its special consent to be questioned in its own courts, to be made compulsorily accountable as stakeholder or garnishee to its debtors, their assignees or creditors—at least without a judicial decision to that effect by the highest tribunal known to the laws.—(3 : 718.)

9. Payment of the mariners in Norfolk by the purser of the United States ship Constitution should be made, notwithstanding the attachment issued for their wages.—(*Ibid.*)

10. The executive officers are not subject to suit for acts done in the regular discharge of their official duties.—(5 : 759.)

11. The treasurer of the United States is not liable to the process of attachment for the salaries of clerks in the departments.—(*Ibid.*)

12. The archives of any department are not in the possession of the head of department, chief of bureau, or clerk under either, for the time being, but in the possession of the United States.—(6 : 7.)

13. Hence, a party cannot, by writ of replevin against such head of department or other public officer, take papers from the public archives on the allegation of their being his private property.—(*Ibid.*)

14. The United States will not make demand for extradition of a person alleged to be a fugitive from the justice of one of the United States, and to have taken refuge in Great Britain, except on the exhibition of a judicial “warrant” duly issued, on sufficient proofs, by the local authority of the State in which the crime is alleged.—(6 : 485.)

15. A mere notification by the local officer of a foreign government of the escape of an alleged criminal is not sufficient *prima facie* evidence of a case to justify the preliminary action of the President.—(7 : 6.)

16. Rafael and Manuel Armijo sued out, in the territorial court of New Mexico, process of injunction and mandamus against the governor as superintendent of Indian affairs, to compel him, out of the general moneys of the government in his hands, as such, to pay to the petitioners indemnity for losses suffered by them through the depredations of the Apaches: *Held*, that the courts have no jurisdiction or authority over such moneys of the government in the hands of the superintendent, either by injunction, mandamus, or any other process of law.—(7 : 80.)

PUBLIC BUILDINGS.

1. Public buildings are not legally in the possession of the head of department, military or naval commandant, or other public officer on duty therein, but in the possession of the United States.—(7: 44.)

2. Hence, an ejectment brought against such officer, under pretence of his being tenant in possession, is without jurisdiction in law, as a means of trying the title of the United States.—(*Ibid.*)

3. The United States having assumed the defence of such a suit, the public officer is to be considered as a nominal party, and the suit is subject to the control of the government.—(*Ibid.*)

PUBLIC LANDS.

(SEE LANDS.)

PUNISHMENT.

1. Military punishment cannot be inflicted after 1st June, 1821, on those who do not then constitute a part of the peace establishment under the act of 2d March, 1821.—(5: 735.)

(See *War Department, Crimes.*)

2. The *Code Pénal* of France punishes all “*forfaitures*,” that is, official crimes of any sort committed by civil functionaries, and this by indictment before the courts of justice.—(7: 9.)

3. But the statute law of the United States, with excess of enactment in particular cases, is incomplete and without comprehensiveness of penal scope regarding acts of official malfeasance.—(*Ibid.*)

4. Acts of Congress provide for the embezzlement of public money, and for that of arms, ordnance, munition, shot, powder, habiliments, or provisions of war; but not of any other chattels belonging to the government.—(*Ibid.*)

5. In the army and navy, however, all acts of malfeasance, including embezzlement, are punishable as military offences.—(*Ibid.*)

6. No remedy exists for the case of a civilian, absconding with maps and collections, which came into his possession in the State of Massachusetts, but which belong to the government, except by ordinary action at law.—(*Ibid.*)

7. District courts of the United States have power to provide specially for the confinement of persons convicted by federal law, if refused admission into the jails of the State.—(7: 615.)

8. In such case, the prisoner may be confined in the penitentiary of the District of Columbia.—(*Ibid.*)

9. There is punishment by statute for the act of a shipmaster in unlawfully putting a seaman on shore in a foreign port; but not for an assault on a seaman on board ship or otherwise in a foreign port.—(7: 721.)

PURPRESTURE.

1. The erection, by third parties, of any structure encroaching on a public pier constructed by the United States for the improvement of a harbor, is an act of purpresture.—(6: 128.)

2. Such an act of purpresture, that is, unlawful appropriation of, or encroachment on, a public right of this sort, whether pier, port, navigable water, or the like, being the usurpation of public franchises or property by private persons, is in general subject to various legal remedies; that is to say, the purpresture contemplated or commenced may be prevented and arrested, or if completed it may be removed and abated, in appropriate forms of law.—(*Ibid.*)

PURSER.

1. The commander of a squadron of the navy on a foreign station has power to appoint a provisional or acting purser in the absence of any purser of the navy duly appointed by the President.—(6: 357.)

2. Although such appointment be subsequently disapproved by the Secretary of the Navy, still the acts which the acting purser may have performed while so acting are not thereby invalidated.—(*Ibid.*)

3. The United States is not responsible for, and cannot be charged with, money paid by a purser to his successor in office, which money did not belong to the government.—(*Ibid.*)

(See *Navy*.)

QUARANTINE.

1. The President cannot cause a quarantine to be established at Alexandria, but the common council of that city have power to do so.—(2: 263.)

2. They have full power to pass all laws which may be requisite to the preservation of the health of the inhabitants, to the prevention and removal of nuisances, to enforce such laws by penalties, and to appoint all officers necessary to carry them into operation.—(*Ibid.*)

3. To enable them to give full effect to this power, jurisdiction has been granted them over the harbor of Alexandria, and over all vessels arriving there, or being in the harbor, or lying at anchor below Pearson's island, and within the District of Columbia; and to prevent and remove all nuisances and such other substances or things on board of any such vessel as may be prejudicial to the health of the inhabitants.—(*Ibid.*)

RECEIPT.

1. When the accounting officers of the treasury, in settling the accounts of a disbursing officer of the United States, have allowed an alleged payment upon the genuine receipt of the party to which the money purports to have been paid, the latter cannot be suffered to claim the money of the government in his own name on the pretence that he gave the receipt without actually receiving the money; and if he be aggrieved, his remedy is against the disbursing agent of the government.—(7: 40.)

(See *Accounts.*)

REGISTRY.

1. The benefit of the registry of an American vessel is lost to the owner during his residence in a foreign country; but upon his return to this country the disability ceases.—(1 : 523.)

2. The fact that, during the foreign residence of the American owner, the vessel carried a foreign flag, does not work any divesture of title, nor render the disability perpetual.—(*Ibid.*)

3. The Spanish schooner *Amistad* having been condemned (not for any breach of the laws of the United States) and sold by order of the district court of the United States, and the purchaser having applied for a register: *Held*, that he is not entitled to a register, but that documents showing the order of sale, its execution by the proper officer of the United States, and the purchase and title of the present owner, ought to be issued to him.—(3 : 606.)

4. The 2d section of the act of 28th of February, 1803, does not require the papers of an American vessel in a foreign port to be delivered to the consul, except in cases where it is necessary to make an entry at the custom-house.—(4 : 390.)

5. Masters of American vessels entering foreign ports where there shall be an American consul, and remaining so long as that, by the local regulations they are required to enter, and afterwards to clear in regular form, are required to deposit their registers, &c., with such consul, irrespective of the purpose for which the port shall have been entered.—(5 : 161.)

6. A registered or enrolled American vessel, voluntarily sold by her owner to a foreigner, and thus denationalized, is, equally with a foreign built ship, incapable of receiving a new register or enrolment, although afterwards purchased and wholly owned by a citizen of the United States.—(3 : 383.)

RECORDS.

1. Records and papers referred to in the 11th article of the treaty of 1819 with Spain are to be deposited in the State Department.—(2: 515.)

REAL ESTATE.

1. Land scrip must be considered as belonging to the realty.—(2: 385.)

2. Land warrants for bounty lands are real estate, and where parties first entitled have died, they must, in general, issue to heirs or devisees, not to administrators with wills annexed.—(2: 506.)

(See *Lands*.)

REMOVAL.

1. It is not a breach of official duty on the part of collectors to refuse to report their reasons for removing their subordinate officers.—(3: 325.)

2. By analogy to the power of removal exercised by the President, collectors may remove their subordinates without consulting the Secretary of the Treasury, though the approbation of the latter be necessary to an appointment.—(*Ibid.*)

3. An officer in default cannot save himself from dismissal by rendering quarterly accounts. He is required not only to account, but to pay, and a default in either subjects him to dismissal.—(5: 334.)

4. The President has constitutional authority to remove the chief justice of the Territory of Minnesota from office.—(5: 288.)

(See *President*.)

5. Military storekeepers are subject to removal from office at the discretion of the President of the United States.—(6: 4.)

6. In the case of appointments and removals by the President, when the removal is not by direct discharge or an express vacating of the office by way of independent fact, but merely by the operation of a new commission or appointment, then the virtue of the old commission ceases only when notice of the new commission is given to the outgoing officer, either by the President, or by the new officer exhibiting his commission to the old one, or by other sufficient notice; and the old officer continues to be entitled to compensation down to the time of his ceasing to perform the duties of his office.—(7: 303.)

REPRISALS.

1. The laws of nations do not allow reprisals except in case of violent injuries directed and supported by the State, and the denial of justice by all the tribunals and the sovereign.—(1: 30.)

2. Where an American vessel commissioned with a letter of marque and reprisal was sold to foreigners, and the new owners were found cruising with the same commander and letter under the American flag, and there was reason to suppose that the commission had been intentionally transferred: *Held*, That it was such an abuse of it as to justify a suit upon the bond.—(1: 179.)

3. A sea-letter given to a foreign merchant vessel by the commander of a ship-of-war in time of war does not convert such vessel into American property.—(6: 630.)

4. A Frenchman, commercially domiciled in the Mexican republic during the war between that republic and the United States, who sailed his vessel under a license or letter of protection from the commander of an American ship-of-war, and who was afterwards prosecuted and subjected to loss on that account by the Mexican government, cannot be redressed by the United States.—(*Ibid.*)

RESERVATION.

1. Decision as to the quantity of land to be reserved for public use, and the places where to be located, rests in the discretion of the President, subject to such regulations as may from time to time be provided by law, either as to the particular public use, the quantity, or the subsequent disposal thereof for private use.—(6 : 156.)

2. At present, the statute limitation as to quantity is not exceeding six hundred and forty acres for forts, and twenty acres for any other public use. Subject to this condition, the military reservation of Fort Vancouver in the Territory of Oregon is valid, notwithstanding any pre-existing donation claim of an inhabitant of the Territory, and notwithstanding the provisional government of Oregon had located the county seat of justice at Fort Vancouver.—(*Ibid.*)

(See *Lands I. Indians.*)

RESIGNATION.

1. An act of resignation by an officer of the navy while insane is a nullity.—(6 : 456.)

REVENUE LAWS.

- I. GENERALLY.
 - II. DUTIES.
 - III. DRAWBACKS.
 - IV. REVENUE OFFICERS.
 - 1. COLLECTORS.
 - 2. OTHER REVENUE OFFICERS.
-

I.—GENERALLY.

1. Michilimacinac being under the dominion of Great Britain the United States cannot authorize a person to send a vessel there to trade.—(1 : 175.)

2. A foreign vessel with a cargo of Jamaica rum was driven into an American port for safety, and a portion of the cargo sold to pay seamen's wages and other expenses: *Held*, that the President has no power to permit the remainder to be sold.—(1 : 460.)

3. A *bona fide* importation of goods into the Floridas after their cession to the United States, but previous to the delivery of possession thereof, was an affair between the importer and the Spanish government, of which the government of the United States had no right to complain; yet goods carried into a port of Florida before the delivery of possession, which remained water borne until after delivery, and then brought into the United States in the same vessel or by transshipment into others, having never been entered in the Spanish custom-houses nor landed, nor the duties paid, would be subject to our revenue laws.—(1 : 483.)

4. On the requisition of the British minister, a British vessel and cargo which the master had wantonly and feloniously taken into an American port, in violation of our revenue laws, and there seized by the officers of the port for such violation, should be restored to an innocent owner. The forfeitures and penalties prescribed by our laws have never been inflicted on owners of vessels which have been brought within our power by others' crime.—(1 : 509.)

5. The rights of seizing officers do not conflict with the power to remit penalties, since, as against the United States, no such right is

vested until after condemnation and the payment over to the collector of the proceeds of the forfeiture for distribution.—(2: 330.)

6. The case of the memorialists is one in which the exercise of the pardoning power is rendered proper, from the entire absence of all criminal intent in the commission of the act from whence the forfeiture arises.—(*Ibid.*)

7. The 105th section of the duty act of 1799, which is conformable to the 3d article of the treaty of 1794 with Great Britain, exempts from duties the proper goods and effects of Indians.—(2: 340.)

8. The act of the 28th May, 1830, repeals so much of the act of 3d March, 1823, as imposes a penalty of fifty per cent. on the appraised value of goods falsely invoiced and entered by the owner at the collector's office.—(2: 358.)

9. The law which is in force at the time of entry and presentment of the invoice is that which must control the proceedings and forfeitures in consequence thereof.—(*Ibid.*)

10. Penalties and forfeitures incurred for offences against the act entitled "An act concerning the registering and recording of ships and vessels," and against the act for "the enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same," may be sued for, recovered and disposed of in the manner provided in the duty act passed on the 4th of August, 1790, notwithstanding its repeal.—(2: 392.)

11. The stolen jewels of the princess of Orange, brought into this country against the will of the owner are not liable to forfeiture.—(2: 482.)

12. The act designating and limiting the funds receivable for the revenues of the United States forbids the receipt of any bank notes except of such specie-paying banks as shall from time to time conform to certain conditions therein mentioned in regard to small bills, and restrains the Secretary of the Treasury from making any discrimination in this respect between the different branches of the public revenue.—(3: 172.)

13. It leaves the Secretary of the Treasury power to prohibit the receipt of particular notes, provided his prohibition apply to both lands and duties, and to direct what particular notes allowed by law shall be received, provided he can find a deposit bank which will agree to receive and credit them as cash, and not otherwise.—(*Ibid.*)

14. The deposit banks are the sole judges of the notes to be received by them from any collector or receiver of public money, and are not bound to receive the notes of any other bank whose notes they may

choose to reject ; provided they apply the same rule to the United States which they apply to other depositors.—(*Ibid.*)

15. The Solicitor of the Treasury may grant indulgences upon custom-house bonds, in the form of instructions to district attorneys, who shall have received them for prosecution, in such cases and on such terms as shall be deemed advantageous to the United States.—(3 : 247.)

16. And although the Solicitor has no jurisdiction of bonds until they are placed in the hands of district attorneys, he may, in proper cases, give the instructions conditionally in advance as to the course to be pursued.—(*Ibid.*)

17. The reciprocity act of 1817 does not permit even an indirect carrying trade by foreign ships. Belgian vessels carrying hides and wool from Buenos Ayres to Boston come within the prohibition of, and are subject to the forfeitures denounced by it.—(4 : 69.)

18. The Secretary of the Treasury is not restrained to the use of sails for the revenue service, but may adopt such of the improved modes of navigation as he shall deem indispensable at this time.—(4 : 145.)

19. He is, however, restricted as to the amount and description of military and naval force, and (by the equity of the act) in regard to the sum to be laid out in building and equipping the vessels.—(*Ibid.*)

20. The fifty per centum additional duty levied on imported goods, under the second proviso of the 17th section of the act of 1842, is a penalty which the Secretary of the Treasury can remit under the act of 1797.—(4 : 182.)

21. Foreign vessels, owned wholly by citizens of the United States, may be lawfully engaged in the coasting trade ; but the cargoes must consist of domestic goods, other than distilled spirits.—(4 : 188.)

22. Subjects of foreign powers are by the act of 1817 incompetent to import any goods, wares, or merchandise from one port of the United States to another, in any vessel of which they may be the owners, in whole or in part ; yet citizens of the United States are untouched by the act, and left to the enjoyment of the privileges conferred by the acts of 1792 and 1793.—(*Ibid.*)

23. The only liability incurred by foreign built vessels wholly owned by citizens employed in trade from port to port in the United States is that of paying the tonnage duties chargeable upon foreign vessels.—(*Ibid.*)

24. The owners of registered vessels engaged in the coasting trade

are subject to the payment of hospital money by the act of 1st March, 1843, and collectors are required to collect it from the seamen, masters, and owners.—(4: 233.)

25. Foreign vessels, except steamboats employed on rivers or bays, &c., may carry passengers from port to port in the United States, subject to the conditions as to fees, tonnage duties, &c., prescribed by the act of 1793, and other laws of the United States.—(4: 270.)

26. Neither the President nor Secretary of the Treasury has power to remit the tonnage duty assessed with reference to the character of the vessel, officers, and crew, nor to remit the penalty of a bond to return seamen.—(4: 273.)

27. The limitation of expenses in the collection of revenue from customs, imposed by the 4th section of the act 3d March, 1849, is not applicable to the first half of the fiscal year commencing 30th June, 1849.—(5: 113.)

28. The 3d and 4th sections of the act are to be read together, and the term “thereafter,” in the proviso to the 4th section, is to be construed to apply to the period for which estimates are to be made under the 3d section, and not to the beginning of the coming fiscal year.—(*Ibid.*)

29. Goods imported fraudulently and collusively under cover of Indians are liable to seizure.—(2: 340.)

30. The Secretary of the Treasury is authorized, by act of 28th September, 1850, to indemnify owners of goods for damages caused by improper seizures in the districts of Upper California and Oregon.—(5: 508.)

31. The authority vested in the Secretary of the Treasury by act of 3d March, 1797, to remit penalties and forfeitures in certain cases, will not authorize him to remit upon conditions which would leave the officer who seized liable to a suit for damages.—(5: 658.)

32. Where a vessel was seized for violating the revenue laws, and the district judge before whom the case was brought decided in favor of the claimants, but refused the officers a certificate that there was reasonable cause for seizure: *Held*, that the appeal from such decision should be prosecuted before the Supreme Court.—(*Ibid.*)

33. Importers continue subject to their original liability to government for duties, &c., notwithstanding the execution of duty bonds, which are no extinguishment of the original liability.—(7: 718.)

34. The Secretary of the Treasury has power to remit double duties on glass imported without the consular certificates required by the act of 18th April, 1818.—(7: 723.)

35. The case of the Olive Branch, on the facts stated, is one for the judiciary to decide.—(7: 737.)

36. Her cargo is liable to duties and to the penalties, if it was not a *bona fide* importation into Florida.—(*Ibid.*)

37. The right of the officers and men of the revenue-cutter to a moiety of the proceeds of the vessel seized is not impaired by the allegation that the seizure was made within the waters of the district of Georgia.—(5: 721.)

38. The 56th section of the act of 2d March, 1799, does not authorize the collector of customs at Sag Harbor to take possession of, and sell, goods which were wrecked on Long Island.—(5: 721.)

II.—DUTIES.

1. Merchandise carried from any place in British America by the subjects of Great Britain into the northern districts of the United States, are subject to the same duties which would be payable by our citizens on the same goods imported from the same place in American ships into the Atlantic ports of the United States.—(1: 155.)

2. The provision in the treaty relating to duties on goods, &c., does not extend to tonnage duties or light-money.—(*Ibid.*)

3. Duties on goods seized with a vessel of a neutral nation and sold, but afterwards adjudged to be unlawful prize, may be lawfully exacted, and cannot be remitted by the Executive.—(1: 176.)

4. The destruction of goods by a public enemy does not release the owner from the payment of duties which have been secured according to law.—(1: 269.)

5. Goods imported in foreign armed ships are subject to duty.—(1: 337.)

6. The innocent purchaser of a brig under forfeiture for smuggling, takes her subject to the confiscation, as much as the purchaser of a stolen horse takes it subject to the claim of the true owner.—(1: 338.)

7. Saltpetre was free from duty under the laws of the United States on the 3d of May, 1803.—(1: 345.)

8. The consignee of a quantity of rum, imported by the brig *Hope*, in 1816, and afterwards sold, is liable for the duties, within the case of the United States *vs.* Lyman, 1 Mason, 482.—(1: 658.)

9. Unless goods are subject to duty at the time of importation they are not subject to duty at all.—(2: 340.)

10. The 105th section of the duty act of 1799, which is conformable to the third article of the treaty of 1794 with Great Britain, exempts from duties the proper goods and effects of Indians.—(*Ibid.*)

11. The third section of the act of 20th July, 1790, entitled "An act imposing duties on tonnage of ships or vessels," is not now in force, in consequence of the operation of the act of 1817. But the act of 1817 does not repeal the 24th section of the act of 18th February.—(2: 392.)

12. The act of 2d March, 1833, to modify the act of 14th July, 1832, and other acts admitting silks, did not repeal the act of 14th July, 1832, and former acts, which impose duties on millinery, hosiery, and ready made clothing; and those articles, of whatever material composed, are subject to duties.—(3: 374.)

13. The operation of the revenue laws cannot be legally suspended by the comptroller, even though goods may have been ordered in view of an erroneous practice, and the importers wish to countermand their orders from abroad.—(*Ibid.*)

14. The tariff act of 2d March, 1833, provides that all articles of manufacture which may be ascertained to be worsted shawls, worsted stuff goods, or composed of silk and worsted, shall be admitted free of duty.—(3: 460.)

15. The duty to be levied on all articles manufactured from two or more materials, without any reference to the relative value or quantity thereof, should be that which would be most beneficial to the government were the articles composed exclusively of any one of them.—(4: 14.)

16. The compromise act of 1833, is capable of being executed without further legislation; the regulations of the act of 1832, and the powers of the Secretary of the Treasury, are in force.—(4: 56—63.)

17. This act must be read with all the other statutes *in pari materia*, as part of a consistent and systematic whole. It only modifies those statutes so far as they may be incompatible with its own provisions.—(*Ibid.*)

18. Coffee imported from Rio Janeiro in a Danish vessel is duty free, the same as if imported in an American vessel.—(4: 300.)

19. Where the authorities of Texas, after the acceptance by that republic of the terms of annexation proposed by the United States, and before the formation of a State government, required the sutlers attached to the army, sent there for their protection, to execute bonds for the payment of duties on supplies imported for such army: *Held*, that such requirement was improper, and that the President ought to address the government of Texas, requesting the duty bonds thus given to be cancelled.—(4: 462.)

20. If the vessel has, in all respects, complied with the various

requisitions of the revenue laws, applicable to such an importation as that made in the Olive Branch, no forfeiture has been incurred.—(5: 741.)

III.—DRAWBACKS.

1. The act of 3d March, 1825, relative to the completion of entries for the benefit of drawback, must be construed as being prospective in its operation.—(1: 707.)

2. The application authorized by the act 3d March, 1825, for the benefit of drawback, may be made by the attorney in fact of the exporter, who may, under proper circumstances, make the oath and give the bond.—(2: 260.)

3. Non-residents, generally, may perform by agents the acts necessary to the benefit of drawback.—(*Ibid.*)

4. Under the acts of 2d March, 1799, and 5th January, 1805, goods may be exported for the benefit of drawback to any foreign port or place situated to the westward or southward of Louisiana, if such port or place be in the dominions of a foreign State immediately adjoining to the United States.—(2: 417.)

5. Goods, wares, and merchandise, imported prior to the passage of the tariff act of 20th August, 1842, are entitled, upon exportation thereof, to drawback, without deducting the two and a half per cent. mentioned therein. The deduction applies only to goods subsequently imported.—(4: 198.)

6. The act of 1849, requiring moneys received from customs, &c., to be paid into the treasury without abatement or reduction, does not deprive goods of the benefit of drawback which were already in the country and entitled to it.—(5: 81.)

7. Its design was to take from goods thereafter to be imported the privilege of drawback when once withdrawn from the custody of the officers of the customs, and not to extinguish any existing right.—(*Ibid.*)

IV.—REVENUE OFFICERS.

1. COLLECTORS.

1. Collectors of customs can neither appoint nor dismiss inspectors, weighers, gaugers, and measurers, without the approbation of the Secretary of the Treasury.—(1: 459.) See *post*, 6, 7.

2. A collector may continue to receive for duties the bonds of a house unquestionably good, notwithstanding the obligor may have taken into partnership an individual whose bonds remain unpaid,

but who has placed in the hands of the district attorney means ample for their payment, and has thereupon been discharged.—(2: 5.)

3. Seizures by collectors are not made pursuant to or by virtue of any judicial authority; and courts have no control over the property seized until the same is libelled. When libelled, the property seized is in the custody of the courts, and is held by the collector as their officer, and subject to their direction *pendente lite*.—(2: 496.)

4. Whenever the prosecution ceases, the collector ceases to be the officer of the court; but as collector of the customs he holds the property by the same right which he exercised before the filing of the libel.—(*Ibid.*)

5. The collector ought not to refuse payment of a debenture certificate, and, in lieu thereof give credit on the extended bond where the party to whom the certificate may have been issued received an extension of payment on bonds given to secure the duties on a subsequent importation of goods; nor where the certificate came into possession of the party by endorsement or assignment.—(3: 279.)

6. It is not a breach of official duty on the part of collectors to refuse to report their reasons for removing their subordinate officers.—(3: 325.)

7. By analogy to the power of removal exercised by the President, collectors may remove their subordinates without consulting the Secretary of the Treasury, though the approbation of the latter be necessary to an appointment.—(*Ibid.*)

8. It is the duty of collectors of customs to pay the duties collected by them into the treasury, although some of them may have been paid under protest, and importers shall have prosecuted to recover them back.—(3: 392.)

9. Where judgments shall be obtained for overcharges of duties, the government ought to discharge them and relieve collectors of the consequences thereof.—(*Ibid.*)

10. Collectors should adjust the duties with importers at the time of the importation, and not leave them unascertained for any considerable time, as the practice will be pernicious in its consequences.—(*Ibid.*)

11. Under the act of July 4, 1840, all collectors of customs are required to execute bonds embracing in terms the new duties to which they are or may be subject.—(3: 600, 584.)

12. Even at ports where there is a receiver general there are some new and increased fiscal duties imposed on the collector which did not previously belong to him.—(*Ibid.*)

13. If the proper department shall deem it expedient, it may, in lieu of a new bond embracing all the duties of the collector, take a new bond, in a suitable penalty, embracing the new duties only, leaving the old one outstanding.—(*Ibid.*)

14. So, also, the act of 1840 requires all collectors of customs to safely keep, without loaning or using, all the public money collected by them, or otherwise at any time placed in their possession or custody, till the same is ordered by the proper department to be transferred or paid out, except as therein particularly provided; and although he is required to pay it over, the character of his responsibilities and his duties is changed, even though there be no increase of money on his hands.—(3: 610.)

15. The authority of a deputy collector of customs ceases upon the removal of the collector.—(4: 26.)

16. The provision made for the continuance of deputies, in cases of disability or death of collectors, does not apply to cases where collectors have been removed from office.—(*Ibid.*)

17. Collectors of customs, who are made superintendents of light-houses, may receive commissions on their disbursements.—(4: 272.)
(See *Compensation.*)

18. Collectors may withhold clearances from any vessels on which there is reason to believe live-oak or red cedar, cut from the public land, is freighted.—(4: 403.)

19. So, also, it is their duty to prosecute for the violations of the law whenever violations come to their knowledge.—(*Ibid.*)

2.—OTHER REVENUE OFFICERS.

1. It is competent for the surveyor of a port to depute inspectors of the customs, appointed by the collector of customs at the same port, with the approbation of the Secretary of the Treasury, to act as markers.—(3: 331.)

2. The practice that has prevailed in this respect since 1822 is erroneous, as the act of that year does not forbid the assigning to inspectors this duty.—(*Ibid.*)

3. No person can be appointed to the office of permanent inspector of customs except with the approbation of the Secretary of the Treasury.—(4: 162.)

4. The only true construction, under the Constitution, of the acts providing for inspectors, is, that the name of the individual proposed to be appointed shall be submitted to the Secretary of the Treasury; and that no one shall be appointed unless approved by him.—(*Ibid.*)

5. A collector of customs cannot remove a permanent inspector without the assent of the Secretary of the Treasury ; but the Secretary of the Treasury may displace an inspector without the consent of the collector.—(4 : 165.)

6. But as the collector's opinion has been required in appointing inspectors, and as his opinion has been uniformly consulted in removing them, it is too late to act on the mere *summum jus*.—(*Ibid.*)

7. Where a surveyor of the port of Cincinnati neglected to collect certain duties properly certified by the collector at New Orleans as due and payable there in cash, but permitted the goods upon which they were chargeable to be delivered to the importers, he only retaining their bonds, taken pursuant to the act of March 2, 1831, and afterwards being found in default at the treasury for such duties, was superseded in office, and a portion of such duties subsequently collected and paid into the treasury by the successor, to whom the bonds were turned over : *Held*, that the delinquent surveyor is not, but that his successor is, entitled to the commissions established by law upon the duties thus collected and paid over.—(5 : 278.)

RIVER AND HARBOR.

(SEE HARBOR.)

ROADS.

1. By force of the act of March 3, 1837, modifying that of July 2, 1836, the question whether the work in each State on the Cumberland road shall be executed continuously or not is left to the discretion of the Secretary of War; except that, in the exercise of his discretion, he must observe the last proviso of the act of March 3, 1837.—(3 : 403.)

2. The act which has recently (1818) passed Congress does not require reimbursement of the money therein appropriated for the Cumberland road.—(5 : 712.)

3. The United States cannot take private land for the construction of a road in one of the Territories without some legal form of expropriation, either by act of Congress or of the Territory.—(7 : 320.)

ROGATORY COMMISSIONS.

1. Prior to the enactment of the act of March 2, 1855, no law existed for the execution of foreign rogatory commissions to take testimony in the United States.—(7 : 56.)

SALVAGE.

1. The recaptors of American vessels from pirates are entitled to salvage, but the rate rests in the discretion of the court before which the cases shall be brought.—(1: 531.)

2. The general maritime law sanctions a claim for salvage in the case of a recapture from pirates ; and by the act of March 3, 1800, national ships are entitled to salvage from the ships of friendly powers, rescued from their enemies ; which act, in spirit, applies to rescues from pirates.—(1: 577.)

3. The rate of salvage to which recaptors of an American vessel from pirates are entitled is governed by the act of Congress of March 3, 1800, giving, where the vessel shall have been sent forth and armed as a vessel-of-war, one-half of the vessel, but only one-sixth of the the cargo.—(The *Adeline*, 9 Cranch, 287 ; 1 Cranch, 28.) The only general rule that can be suggested is one-sixth, and half of the vessel, if she shall have been armed after her capture.—(1 : 584.)

4. If the recaptured vessel had been long in the hands of pirates, and had been used as their own, a higher salvage ought to be allowed than if she were recaptured in the moment of her capture, having just struck, and her crew still in the capacity to make resistance.—(*Ibid.*)

5. The officers and crew of a United States vessel are not entitled to salvage as against the government for saving the property of the United States wrecked on the Florida reef, they having done no more than their duty.—(1: 675.)

6. The salvage decreed to the officers and crew of the United States brig *Washington*, for the capture of the *Amistad*, should be divided, not among those who were on the books of the brig, but among those who were actually on board of her at the time of the capture.—(4: 17.)

7. The officers and crew of a vessel in the naval marine service of the United States are entitled to salvage for saving a French ship whilst on the rock of El Riso, near the anchorage of Anton Lizardo, the objection that government vessels are not thus entitled being invalid.—(5 : 116.)

8. The rule is universal in the United States that salvage rendered

by the naval marine is to be compensated in like manner as that rendered by the private marine.—(*Ibid.*)

9. Officers and crews of the public ships of the United States are not entitled to salvage, civil or military, as of complete legal right.—(7: 756.)

10. The allowance of salvage, civil or military, in such cases, like the allowance of prize money on captures, is against public policy, and ought to be abolished in the sea service, as it was long ago in the land service.—(*Ibid.*)

SEAMEN.

1. Mariners may be said to be citizens of the world, and may serve on board any merchant vessel engaged in contraband trade.—(1 : 62.)

2. The master of a vessel belonging to the United States, sold in a foreign country in consequence of her being stranded, is not liable for three months' unearned pay to the seamen within the meaning of the 3d section of act of February 28, 1803, for such sale was the result of a disastrous Providence.—(1 : 148.)

3. Seamen left behind in a foreign country on account of inability, from sickness, to return in the vessel in which they went out, are within the provisions of the act of 28th of February, 1803, supplementary to the act concerning consuls; and for them the master should deposit with the consul three months' pay over wages, &c., as in other cases of voluntary discharge.—(1 : 593.)

4. The three months' pay, over and above the wages due mariners, establishes a necessary connexion between the pay so to be advanced to the consul by the shipmaster and the rate of wages then accruing to the seamen.—(2 : 256.)

5. The policy of the law of 1803 was to discourage the discharge of American seamen in foreign ports.—(*Ibid.*)

6. Where the vessel had been wrecked on the coast of Spain, and the captain, exercising the authority vested in him under those circumstances, sold her on account of the underwriters and discharged the company: *Held*, that the case was not within the act of 1803; and that, therefore, the consul of the district cannot retain three months' extra wages for the seamen.—(2 : 419.)

7. The provisions of the act of 28th of February, 1803, in relation to the extra wages of American seamen, to be paid to the consul where the ship is sold and her crew discharged in a foreign country, are confined to vessels owned by citizens of the United States, and constituting a part of our mercantile marine by sailing under our flag. American seamen on foreign vessels must look to the laws of the country under whose flag they sail for remuneration and protection in such emergencies.—(2 : 448.)

8. The public interest requiring that American seamen should not be discharged abroad, nor set on foreign shores in foreign ports,

where they may be tempted to enter into foreign employment, to the loss of our service, the government has given instructions to commanders to send home their discharged seamen at the expense of the United States.—(2 : 468.)

9. Seamen on board vessels-of war are not entitled to pecuniary assistance from consuls abroad under act of 28th of February, 1803.—(3 : 683—685.)

10. The moneys in the hands of the Secretary of State were raised from the wages of merchant seamen only, and should be applied only for the relief of that class of seamen which have contributed to the fund.—(*Ibid.*)

11. Payment of the mariners in Norfolk, by the purser of the United States ship Constitution, should be made, notwithstanding the attachment issued for their wages.—(3 : 718.)

12. The act of 1803, requiring masters of vessels belonging to citizens of the United States, and bound to some port of the same, to take, at the request of the consul, destitute seamen on board, and to transport them to the port of the United States to which such vessel may be bound, is limited to such vessels as shall be bound from the port where the request is made direct to some port in the United States.—(4 : 185.)

13. Commanders of public vessels are not required to employ and pay branch pilots upon entering the ports and harbors of the United States.—(4 : 532.)

14. American seamen shipped in a *British* vessel, and, in consequence of its being wrecked, were left in a foreign port destitute : *Held*, that they were entitled to the relief provided in the 4th section of the act of 28th of February, 1803.—(5 : 547.)

15. Expenditures for the ransom of the crew and passengers of a wrecked American vessel, held prisoners by the Indians of Queen Charlotte's island, do not come within the scope of the appropriations for the relief of American seamen, administered by the Secretary of State.—(6 : 126.)

16. The statute provision for the surrender of deserting seamen applies only to the seamen of governments with which a treaty exists to that effect.—(6 : 148.)

17. There is no express provision to that effect in existing treaties between the United States and Denmark.—(*Ibid.*)

18. Engagements of extradition, whether of fugitives from justice or from service, stand in each case on particular stipulations of treaty,

and are not to be inferred from the "favored nation" clause in treaties.—(*Ibid.*)

19. A legislative act of the British colony of New South Wales, enacting that certain proceedings may be had in the court as to deserting seamen of any foreign country in that colony, provided its government assents: *Held*, that the President cannot give such assent on the part of the United States, but that it can only be done by treaty or act of Congress.—(6: 209.)

20. Masters of American vessels cannot lawfully discharge seamen in foreign ports without intervention of the consul.—(7: 349.)

21. It does not help the matter to allege that the seamen consent, or have misconducted themselves, or are not Americans; of all that it is for the consul to judge.—(*Ibid.*)

22. There is punishment by statute for the act of a shipmaster in unlawfully putting a seaman on shore in a foreign port. But not for an assault on a seaman on board ship or otherwise in a foreign port.—(7: 721.)

23. Shipmasters in foreign ports are subject, on the requisition of the consul, to take on board and convey to the United States distressed mariners; but not seaman or other persons accused of crimes, and to be transported to the United States for prosecution.—(7: 722.)

24. No indictment lies against a master of a ship for discharging irregularly, in a foreign port, a seaman shipped irregularly in the United States. But a *qui tam* suit lies for the irregular shipment.—(7: 730.)

25. The master of a ship is indictable for acts of violence to a seaman on board the ship in the harbor of Charleston.—(7: 732.)

SEIZURE.

1. If the circumstances attending the seizure of a vessel were such as to constitute a defence, they must be pleaded in the action. If the seizure were an official act done by the defendant under color of the powers vested in him as governor they will be an answer, as the extent of the defendant's authority can be determined only by the constituted authorities of his own nation.—(1 : 45.)

2. The seizure of an American vessel by another, also American, within the jurisdiction of a foreign government, for an infringement of our revenue or navigation laws, is a violation of the territorial authority of the foreign government.—(4 : 285.)

3. To whatever extent a ship-of-war of the United States may be justified in seizing upon the high seas a vessel of the United States sailing in violation of the laws thereof, and bringing her into our ports for trial and condemnation, no such authority to seize for such an offence can be rightfully exerted within the jurisdictional limits of a foreign power.—(*Ibid.*)

(See *Revenue Laws.*)

4. Although the officers and crew who seized the *Carmelita* for the violation of the slave laws are entitled to a moiety of the proceeds of that vessel, it is doubtful whether it would be consistent with the respect due to the district court of Georgia, which has decided otherwise, to question its decision on the ex parte statement of an interested individual.—(5 : 719.)

5. The 56th section of the act of 2d March, 1799, does not authorize the collection of customs at Sag Harbor to take possession of and sell goods which were wrecked on Long Island.—(5 : 721.)

6. When the equipment of a vessel is adapted to the slave trade, that fact, with other circumstances, may be probable cause for a seizure.—(5 : 724.)

SIGNATURE.

1. Heads of departments or of bureaus and other certifying officers of the government cannot certify by delegation, unless when specially authorized so to do by act of Congress.—(7: 594.)

SITES.

(SEE TOWN SITES.)

SLAVES.

I. GENERALLY.

II. ABDUCTION OF SLAVES.

I.—GENERALLY.

1. Bringing slaves from Martinique, the property of residents there, may be piracy, or may prove, by the place of its commission, to be only an offence against the municipal laws.—(1: 29.)

2. The government may instruct the district attorney for Georgia to prosecute the offenders *criminaliter* as far as the law will permit, having in view the restitution of the negroes to their true owner; and that failing to issue civil process with the approbation of the owner or agent, they may assume the responsibility of the expense.—(*Ibid.*)

3. It is the duty of the President to cause to be delivered to the minister of Denmark a slave who, by concealment in an American vessel lying at St. Croix, had been brought to the port of New York, and detained in prison until orders might be given concerning the further disposal of him.—(1: 566.)

4. So long as Denmark tolerates slavery in her dominions, it is an invasion of her sovereignty to take away from St. Croix, by seduction, invitation, connivance, ignorance, or mistake, slaves from the possession of Danish owners, and, if allowed and unredressed on our part, is a just cause of war; to bring them to the United States, and to refuse to return them to their owners on the call of their government, would be such a violation of private property, and such a lawless infraction of the rights and sovereignty of Denmark, as to expose us to the just resentment of that nation, and the merited reproach of the civilized world.—(*Ibid.*)

5. The President may issue an order directed to the marshal of the State of New York, requiring him to deliver the slave to the order of the minister of Denmark; or he may notify the governor of that State of the facts, and request him to cause him to be delivered to the marshal for the purpose of delivering him over to the minister.—(*Ibid.*)

6. The treaty with Great Britain contains no express stipulation on the subject of slaves employed as seamen on British merchantmen trading to the United States, and the first article cannot be construed to imply an obligation to protect the rights of foreign owners of slaves brought to our shores thus as seamen.—(2: 475.)

7. As it is a fixed principle of the law of England that a slave becomes free on touching the soil of Britain, the government of the United States cannot be required, by the mutuality and liberty of commerce expressed in the treaty, nor by comity, to protect the rights of British slave-masters over their slaves when they are found in our country.—(*Ibid.*)

8. If, by the laws of any of the States, a slave becomes free as soon as he is brought within their limits, and the slaves of British subjects are found there, and taken by the State authorities from their owners and declared to be free, the general government is under no obligation to interfere in behalf of masters, nor have British masters any right to call on the United States to support their claim of property.—(*Ibid.*)

9. Wherefore, the right of property of the master must depend on the laws of the State where the slaves may be found.—(*Ibid.*)

10. The President has no power to cause fugitive slaves, who have taken refuge among the Indians west of the Mississippi, to be apprehended and delivered by the United States officers and agents to the owners from whom such slaves shall have fled.—(3: 370.)

11. The President has authority to make all the regulations and arrangements that he may deem expedient for the safe-keeping, support, and removal beyond the limits of the United States of all such "negroes, mulattoes, and persons of color" as shall be taken from slavers by the armed vessels of the government.—(4: 566.)

12. And all negroes, mulattoes, and persons of color adjudged by competent tribunals to have been imported into the United States contrary to the provisions of the several acts to prohibit the slave trade, and committed to the custody of marshals pursuant to such adjudications, are subject to his orders.—(*Ibid.*)

13. It having been ascertained by the verdict of a jury that the two slaves brought into the port of New Orleans in the brig Titi were so brought in violation of the acts prohibiting the slave trade, the President is called upon to exercise the authority so conferred.—(*Ibid.*)

14. Certain negroes who emigrated, in 1837 and 1838, with the Seminoles from Florida to the country assigned them west of the Mississippi, but who thereafter left the employment of the Seminoles and went to the military reserve at Fort Gibson, where they were

protected by General Arbuckle, pursuant to a letter from General Jessup, dated 8th April, 1846, stating that they had been promised a qualified freedom by him, as commanding general of the army in Florida, should be restored to the condition in which they were, with the Seminoles, prior to the date of said letter.—(4: 720.)

15. The provisions of the bill, commonly called the fugitive slave bill, (1850,) submitted by Congress to the President for his approval and signature, are not in conflict with the provisions of the Constitution in relation to the writ of *habeas corpus*.—(5: 254.)

16. The expressions used in the last clause of the sixth section that the certificate therein alluded to “shall prevent all molestation” of the persons to whom granted, “by any process issued,” &c., probably mean only what the act of 1793 meant by declaring a certificate under that act a sufficient warrant for the removal of a fugitive, and do not mean a suspension of the writ of *habeas corpus*.—(*Ibid.*)

17. There is nothing in the act inconsistent with the Constitution, nor which is not necessary to redeem the pledge which it contains, that fugitive slaves shall be delivered upon the claim of their owners.—(*Ibid.*)

(See *Extradition.*)

18. The constitutional right of a citizen of the United States to reclaim a fugitive from his lawful service extends, not only to the States and to the organized Territories, but also to all the unorganized territorial possessions of the United States.—(6: 302.)

19. If, in such Territory, there be no Commissioner of the United States to act, the claimant may proceed by recaption without judicial process.—(*Ibid.*)

20. Any such fugitive from service in the Indian country is there unlawfully, and as an intruder is subject to arrest by the executive authority of the United States.—(*Ibid.*)

21. Such fugitive cannot be protected from extradition by any Indian tribe or nation, for the Indians are themselves the mere subjects of the United States, and have no power in conflict with the Constitution of the United States.—(*Ibid.*)

22. By the local law of the organized political communities of the Cherokees, Choctaws, and Chicasaws, there is ample provision for the delivery up of fugitives from service in any of the States.—(*Ibid.*)

23. The question of the domicil, nationality, or competent forum of a slave, depends on that of his master.—(7: 278.)

24. Hence, if a crime be committed by a slave in the Indian coun-

try, and his master is a citizen of the United States, he must be tried by the district court.—(*Ibid.*)

25. But if the slave of a Cherokee commit a crime against a Cherokee, and in the Cherokee nation, he is triable by the Cherokees.—(*Ibid.*)

II.—ABDUCTION OF SLAVES.

1. The courts of the United States are open to the complaint of the owner of an abducted slave ; but the executive authority cannot properly interfere to administer relief in such cases.—(4 : 269.)

2. Where an American vessel has brought off a slave from the Cape de Verde islands, the Executive will not interfere further than to direct the district attorney to inquire into the facts and institute a prosecution if they warrant it.—(*Ibid.*)

(See *Extradition.*)

SLAVE TRADE.

1. By the act of March 22, 1774, "to prohibit the carrying on the slave trade from the United States to any foreign place or country," the collector of customs cannot require a bond as a prerequisite to giving a clearance, except upon the oath or affirmation of some citizen.—(1: 312.)

2. The act entitled "an act in addition to the acts prohibiting the slave trade" does not authorize the President to appropriate any part of the sum therein specified to the purchase of land on the coast of Africa or elsewhere for the purposes of a settlement, nor to the transportation of free people of color to Africa, nor to the purchase of carpenter's tools, for the purpose of making a settlement in Africa, nor to the payment of the salary and expenses of transporting an agent from this country to Africa.—(1: 314.)

3. The President should not assume the responsibility of exercising inferential duties under that act.—(1: 317.)

4. The act of March 3, 1819, applies to all negroes previously brought into the United States contrary to the provisions of any of the acts of Congress on the subject, and not disposed of by State laws.—(1: 334.)

5. By the act of Congress of March 2, 1807, the importation of slaves from Africa or elsewhere into the United States, or any place within their jurisdiction, is prohibited under severe penalties; and the importer and all persons claiming under him are therein declared to have no title to the negroes imported, nor to their services.—(1: 446.)

6. By the same act it is left to the legislature of the several States to regulate the manner in which negroes thus imported shall be disposed of.—(*Ibid.*)

7. It is the duty of every good citizen, who may be apprized of a breach of this law, to take prompt and immediate steps for the seizure of the negroes, and to inform the governor of the State that he may give directions for the disposal of them.—(*Ibid.*)

8. The statute of Georgia, making the regulations contemplated by the law of Congress, passed 19th December, 1817, is not unconstitutional.—(*Ibid.*)

9. The act of 1818, prohibiting the slave trade, does not prohibit the return of slaves who left the United States with their owners, and intending to return.—(1: 503.)

10. A vessel under forfeiture for having violated the laws prohibiting the slave trade remains subject to the forfeiture in the hands of subsequent purchasers; and the President will not interpose in any suit brought against the vessel on that account.—(1: 618.)

11. The act of the United States schooner *Grampus* capturing and bringing in for adjudication, under the act of 3d March, 1819, the Spanish vessel *Phoenix*, with Africans on board, was not a violation of the laws concerning slave trade.—(2: 365.)

12. Whether the Africans can be delivered to a claimant whose title to them is deduced from a traffic which is equally forbidden by the laws of his own country and of ours, is a question which ought to be referred to the highest judicial tribunal.—(*Ibid.*)

13. If the owner of slaves remove with them to another country, with the view to a permanent settlement, and there remain several years, he cannot lawfully bring them into this country again.—(2: 749.)

14. Where the American consul at Havana, to whom an American brig reported herself, suspected her papers to be fraudulent, and not such as to entitle her to the protection which belongs to vessels sailing under the American flag, and ordered the commander of a ship-of-war, lying at that port, to seize and detain her until the government could be advised of the facts and direct as to the course to be adopted; and a correspondence having ensued between said consul and the captain general of Cuba, disposing of the question of the violation of the sovereignty of Spain, in making the seizure in the port of Havana; and the question under the several navigation acts and the laws to prohibit the slave trade being presented as to the legality of the seizure, and the course to be pursued under the circumstances: *Held*, that whenever there is just cause to believe that any merchant vessel is engaged in an illicit trade a public vessel has the right to detain her until our government can act upon the subject; and that the question of the violation of the sovereignty of any foreign government in nowise affects the question in respect to the liability of the suspected vessel to seizure under such circumstances.—(3: 405.)

15. Steamboats and other vessels passing from Pontchartrain, by Lake Borgne and Pascagoula bay, to Mobile, and touching on their passage at intermediate places are not to be considered as sailing coastwise, within the meaning of the act of 2d March, 1807, to prohibit the importation of slaves.—(3: 512.)

16. Nor are vessels passing on any river or inland bay of the sea within the jurisdiction of the United States within the meaning of the act.—(3 : 581.)

17. The selling of an American vessel in the port of Rio Janeiro to a slave dealer, deliverable on the coast of Africa, is not of itself an aiding or abetting of the slave trade. The vendor must not lend assistance to such slave dealer by navigating the vessel to the coast of Africa upon an outward slave trade voyage; for, if he does, he becomes thereby a participant in the trade, and, as such, is subject to punishment; but if he only make a *bona fide* sale of his property, deliverable upon that coast or elsewhere, he does not incur any responsibility.—(4 : 241.)

18. If an American citizen charter his vessel for the prosecution of a slaving voyage, he will be guilty of a violation of the slave trade acts; but if he charter his vessel for the prosecution of a voyage which is *prima facie* innocent, the fact that it may be converted to an inhibited ulterior purpose will not expose him to penalty, or his vessel to forfeiture.—(*Ibid.*)

19. Americans who have participated in the slave trade in foreign ports, are indictable in any district of the United States in which they may be found.—(5 : 454.)

20. It is against public policy to dispense with prosecution for violation of the law to prohibit the slave trade.—(5 : 717.)

21. The Executive may apply to the support of Africans, seized in his efforts to prohibit the slave trade, such portion of the \$100,000 appropriated for carrying the prohibitory laws into effect as may be necessary for that purpose.—(5 : 728.)

22. The bringing to the port of New York on board a schooner a passenger from Tobago, who had with him a free colored servant, hired to him by his mother, with his assent, and who came with him to live with and serve him in New York, is not a violation of the slave laws.—(5 : 736.)

23. Although the officers and crew who seized the Carmelita for the violation of the slave laws are entitled to a moiety of the proceeds of that vessel, it is doubtful whether it would be consistent with the respect due to the district court of Georgia, which has decided otherwise, to question its decision on the *ex parte* statement of an interested individual.—(5 : 719.)

24. When the equipment of a vessel is adapted to the slave trade, that fact, with other circumstances, may be probable cause for a seizure.—(5 : 724.)

SMITHSONIAN INSTITUTION.

1. The Attorney General is by designation of person a member of the Smithsonian Institution ; but it is not his duty individually, and as Attorney General, to give advice to the regents of that institution.—(6 : 29.)

SOLDIERS.

1. Section seven of the act of 3d March, 1851, to found a military asylum, appropriates all moneys belonging to the estates of deceased soldiers remaining unclaimed for three years subsequent to the soldier's death, so that such moneys may be drawn from the treasury without further special appropriation.—(5 : 677.)

(See *Enlistment, Compensation.*)

STATE DEPARTMENT.

1. The Department of State was made the depository, by stipulation, of the records and papers referred to in the eleventh article of the treaty of 1819 with Spain, and they must not be delivered up to claimants; and any law of Congress that shall authorize or require their delivery will be a violation of that treaty.—(2: 515.)

2. It is the duty of the Secretary of State to prescribe to the contractor for publishing documentary history of the American Revolution the contents of the several volumes, that the selection of materials may not be altogether at the discretion of the compilers.—(4: 584.)

3. He may signify his approval of the materials, either before or after the manuscript shall be prepared for publication, as may be most convenient. The law will be answered by an approval at any time previous to the publication.—(*Ibid.*)

(See *Clerks, Compensation.*)

4. When a Commissioner of the United States has made return according to law as to an alleged fugitive from justice, that he is lawfully subject to extradition, it is the duty of the Secretary of State to order the final writ of extradition, notwithstanding any contradictory proceedings of the courts of a State.—(6: 270.)

5. Counsel, specially employed by the Secretary of State to aid the district attorney in the prosecution of persons accused of being engaged in illegal military enterprises in Texas, should be paid out of the funds of the State Department.—(6: 355.)

6. The Secretary of State has no power to appoint a commission or board to determine how much money a foreign prince shall pay to counsel in the United States for professional services.—(6: 386.)

7. The increase of salary for clerks of the three first classes, provided by the act of April 22, 1854, applies to clerks of similar classes in the State Department.—(6: 457.)

8. The increase of salary provided by the act of April 22, 1854, does not apply to any clerks in the Department of State above the third class.—(6: 464.)

9. The provisions of the act of February 26, 1853, regulating the fees of clerks of the courts of the United States and other officers, which provides, among other things, a price for publishing any

statute, notice, or order required by law or by the lawful order of any court, department, bureau, or other person in any newspaper, applies only to such a publication in the case of judicial proceedings, and not to the publication of laws and treaties by the Secretary of State.—(6: 502.)

10. Congress authorized the Secretary of State to purchase of Mrs. Madison “all the unpublished manuscript papers of James Madison, now belonging to and in her possession,” for a certain sum of money. Mrs. Madison conveyed and delivered to the Secretary of State such papers as she understood to be intended by the act, but without schedule or inventory, and they were so accepted and paid for by the Secretary. Meanwhile, other manuscripts of Mr. Madison remained in her possession, and were disposed of by her son and executor: *Held*, that the contract, and delivery, and acceptance of manuscripts, with accompanying explanations, between Mrs. Madison and the Secretary of State, disposed of the question of what manuscripts were intended by the act of Congress.—(7: 104.)

11. Miscellaneous expenditures, incurred by order of the State Department for the purpose of preserving the neutrality of the United States, are chargeable to the funds of that department.—(7: 398.)

STOLEN GOODS.

1. T. A. R., clerk in a post office, was indicted for purloining money from letters, but the jury on three successive trials failed to agree. On the arrest of R., bank notes found in his possession were seized by the officer on probable suspicion of being stolen money or the proceeds, but the same has not been identified: *Held*, that if R. be acquitted, or the prosecution discontinued, the bank notes must be returned to him.—(7: 74.)

STOPPAGE IN TRANSITU.

1. H. D. Bacon, a member of the firm of Page & Bacon, of St. Louis, and also of that of Page, Bacon & Company, of San Francisco, applied to the Postmaster General for an order to the deputy postmaster of the city of New York, that all the correspondence of the firm in San Francisco, addressed to their several agents in the Atlantic and western States, and daily expected in New York by the steamer bringing the mails from San Francisco, should be delivered to him, H. D. Bacon: *Held*, that the writer of a letter has no such general property in it as to entitle him in every case to reclaim it while *in transitu*.—(7: 76.)

2. Exceptional cases may exist of right to reclaim a letter in the analogy of the cases of stoppage *in transitu* by the law merchant; but all such cases are exceptional, each depending on its own special merits, and there is no authority in law for the issue of the order asked in this case of the Postmaster General.—(*Ibid.*)

STOREKEEPERS.

1. Military storekeepers are all of one grade, and alike subject, as to their place of duty, to the orders of the Secretary of War.—(6: 7.)
(See *War Department*.)

SURETIES.

I.—GENERALLY.

II.—HOW DISCHARGED.

I.—GENERALLY.

1. It is a settled principle, both of law and in equity, that a surety can be no further bound than he has expressly bound himself by his own stipulation.—(1 : 339.)

2. Sureties of collectors of taxes appointed under the act of the 22d July, 1813, are liable for their delinquencies under the act of 1815, to the amount of the penalties of their bonds.—(*Ibid.*)

3. A marshal may bring suit against a defaulting deputy, whenever he becomes liable himself to the United States by reason of such default.—(1 : 363.)

4. Where the assignee of a government contract to build a fortification executes a bond to the government, with sureties, conditioned that he fulfil the original contract, he and his sureties are as much bound to the performance of the original contract as they would be in the case of a contract wholly original.—(1 : 402.)

5. The estate of a surety for a receiver of public moneys for lands is liable, after the death of such surety, for the faithful performance by the receiver of his duties until the end of his term ; the surety having bound his heirs, executors, and administrators.—(1 : 573.)

6. The sureties of a collector of taxes, appointed by the President during a recess of the Senate, and confirmed by the Senate at its next session, who signed the bond given by the collector when he entered upon his official duties, are liable for the faithful performance of the duties of the collector throughout the term ; the appointment during the recess and the subsequent nomination, and confirmation by the Senate, making but one and the same appointment.¹—(*Ibid.*)—See § 8.

7. Sureties to pursers in the navy are not liable to have their compensation stopped on account of any balances found due the government from their principal.—(1 : 617.)

¹ But see contra *United States vs. Kirkpatrick*, 9 Wheat., 720.

8. The subsequent nomination to, and confirmation by, the Senate of an appointee during a recess is not a continuation of the first commission, but is a new appointment, and requires a new bond for the performance of its duties.—(1 : 637.)

9. Where an officer appointed by the President during a recess of the Senate falls in arrear with the government during his first commission, but after his nomination to, and confirmation by, the Senate, makes payments into the treasury, yet continues in arrear for current dues to the government, for which a suit is brought, it is competent for the jury to apply the payments in exoneration of the balances for which the sureties under the first commission were bound.—(*Ibid.*)

10. Liens extend to all the real estate of collectors and their sureties, owned by them at the time the sums in default were committed to them.—(2 : 310.)

11. The sureties of marshals, whose official functions have ceased, are not liable for any defalcation, on his part, to pay the several assistants in taking the census the amount due to each, out of the funds to be transmitted to him after their removal from office by the Department of State.—(2 : 416.)

12. Sureties of a delinquent or defaulting principal obligor in a custom-house bond are not liable to detention of moneys due them ; the phrase “ who is in arrears to the United States,” contained in the act of January 25, 1828, applying only to persons who, having previous transactions of a pecuniary nature with the government, are found upon the settlement of those transactions to be in arrears.—(3 : 52.)

13. The sureties to a contract made by an infant are clearly bound for his faithful performance of the contract ; for, though the infant may excuse himself on the ground of his minority, the privilege is personal to himself, and cannot be made available as a defence by them.—(4 : 334.)

14. The sureties of a receiver of public moneys, appointed during a recess of the Senate, are liable for all moneys received by him up to the end of the succeeding session of the Senate, in cases where the receiver shall not have previously given a new bond as required by law of officers nominated to and confirmed by the Senate whilst holding under a temporary appointment.—(5 : 291.)

15. The sureties of a receiver of public moneys, (who shall have been acting under a temporary appointment,) appointed by and with the advice of the Senate, are liable for all moneys in his hands on the

day of the giving of their bond, and which he may subsequently receive, to the extent of its penalty.—(*Ibid.*)

16. If there be an interregnum in the security for the performance of the duties of the office of the receiver of public moneys, appointed during a recess, and subsequently nominated to and confirmed by the Senate, by reason of his neglect to give a new bond upon his second appointment until after the adjournment of the Senate, neither the sureties in the first nor second bond are liable for the moneys by him received during that period.—(*Ibid.*)

II.—HOW DISCHARGED.

1. Sureties on a former bond of a purser do not appear to be discharged under a new appointment.—(1: 175.)

2. At common law the release of one obligor is the release of all the rest; and although the acts of Congress may save the sureties of an insolvent debtor to the United States, the question is doubtful.—(1: 367.)

3. The subsequent nomination to and confirmation by the Senate of an appointee during a recess is not a continuation of the first commission, but is a new appointment, and requires a new bond for the performance of its duties.—(1: 637.)

4. Judgments upon duty bonds against a surety are valid, although the suits were protracted until the principal obligor and co-surety became insolvent. It is settled law that no *laches* can be imputed to the government; and that no voluntary forbearance, either to institute or to press a suit against the principal, can discharge the sureties.—(2: 51.)

5. The commission of an officer appointed during a recess, who is afterwards nominated and rejected, is not thereby determined, nor his sureties released from liability on account of any subsequent breach of his official bond.—(4: 30.)

6. The sureties of a purser owing a balance exceeding one thousand dollars, and ordered to sea or other service, are not thereby discharged; but, for abundant caution, their consent should be previously obtained.—(4: 119.)

7. The discharge of a principal debtor under the act of March 3, 1817, does not discharge the sureties of such debtor.—(5: 746.)

8. After return of execution on *scire facias* against the surety of an absconding criminal, charged with violation of acts of Congress, the only mode of relieving the surety is by exercise of the pardoning power of the President.—(6: 408.)

9. The sureties of a mail contractor are responsible to the government for the whole term of the contract, and as well after the death of their principal as before.—(6 : 410.)

10. The President has no authority to release the sureties on a bond given to the United States by a marshal for the faithful discharge of the duties of his office.—(7 : 62.)

SURVIVORSHIP.

1. A mere naked power does not survive; but a power coupled with an interest or a trust does.—(2 : 398.)

2. P. and R., survivors of F., who by act of Congress were constituted trustees for B. and M., are entitled to receive and distribute the fund appropriated by the act of May 26, 1830.—(*Ibid.*)

SUTLER.

1. Army sutlers are not subject to a license in the State of California on sales made by them to officers or soldiers of the army, nor to tax on goods kept by them at a military post for that purpose; but sutlers may be compelled to pay license if they enter into general trade within the State.—(7 : 578.)—See *Revenue Laws*, title *Duties*, 19.

TAXES.

1. Neither the city council nor any department of the government of New Orleans can legally tax the property of the United States within that Territory.¹—(1 : 157.)

2. Grounds purchased in any State, with the consent of its legislature, for the site of forts, magazines, arsenals, dock-yards, and other needful buildings, can neither be taxed by the State nor by the municipality in which they are situated.—(1 : 620.)

3. As Congress have exclusive jurisdiction over all places purchased, by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings, it follows that no State can have, or can give, any authority to tax them.—(5 : 316.)

4. A tax for grading streets, assessed on land *in transitu* from the State of New York, and from individuals therein, to the United States, held to have so much of possible right as to render it advisable for the United States not to contend.—(6 : 265.)

5. The persons in the employment of the United States, actually residing in the limits of the armory at Harper's Ferry, do not possess the civil and political rights, nor are they subject to the tax and other obligations, of citizens of the State of Virginia.—(6 : 577.)

¹ In the case of *McCulloch vs. The State of Maryland et al.*, 4 Wheat., 316, it was held that States have no power to tax the constitutional means employed by the general government to execute its constitutional powers.

TERRITORIES.

1. The appointing power in the northwestern territory is expressly given to the governor in cases in which it is not otherwise directed ; and positive provisions are not abridged by implication.—(1 : 102.)

2. It has been the practice of the President to appoint three judges provided for in the ordinance, having common law jurisdiction, from an implied power ; yet, as the implication does not extend beyond the three, the governor is justified in his appointment of all judges and officers.—(*Ibid.*)

3. Brigadier generals of militia of a Territory may be appointed by the President.—(1 : 165.)

4. The salaries of the governor and judges of Arkansas Territory did not commence until the 4th of July, 1819, as the Territory was not organized till then.—(1 : 310.)

5. The act of 3d March, 1823, was a permanent and general amendment of the pre-existing judiciary system, affecting not only the judges then in office, but all who should thereafter come into office in the Territory of Michigan.—(1 : 696.)

6. The powers of all the departments of the regularly organized territorial governments are derived from the acts of Congress making rules for such governments, and can be exercised only in the manner and within the limits prescribed by their provisions ; wherefore, territorial legislatures cannot, without permission from Congress, pass laws authorizing the formation of constitutions and State governments.—(2 : 726.)

7. And all measures commenced and prosecuted with a design to subvert the territorial government, and to establish and put in force in its place a new government without the consent of Congress, will be unlawful.—(*Ibid.*)

8. But the people of any Territory may peaceably meet in primary assemblies, or in conventions chosen by such assemblies, for the purpose of petitioning Congress to abrogate the territorial government, and to admit them into the Union as an independent State ; and if they accompany their petition with a constitution framed and agreed on by their primary assemblies, or by a convention of delegates chosen by such assemblies, there is no objection to their power to do so, nor

to any measures which may be taken to collect the sense of the people in respect to it; provided such measures shall be prosecuted in a peaceable manner, in subordination to the existing government, and in subserviency to the power of Congress to adopt, reject, or disregard them, at their pleasure.—(*Ibid.*)

9. Territorial judges, not being constitutional but legislative officers only, and not civil officers within the meaning of the Constitution, are not subject to impeachment and trial before the Senate of the United States.—(3 : 409.)

10. The salaries of the territorial officers of Oregon date from the time of their appointment, but are not payable until they reach the Territory and enter upon their official duties.—(5 : 219.)

11. By the act of 14th of August, 1848, establishing a territorial government in Oregon, the legislative power and authority were vested in a legislative assembly, consisting of a council and house of representatives; and the concurrence in, and approval of, the acts of that body by the governor was not made necessary.—(5 : 359.)

12. That act conferred authority upon the legislative assembly to locate the seat of government for the Territory.—(*Ibid.*)

13. By the act of 11th of June, 1850, making appropriations for public buildings in that Territory, the governor was invested with a concurrent and equal authority with the legislative assembly in the application of the money.—(*Ibid.*)

14. The territorial legislature of Oregon passed a law, in February, 1851, removing the seat of government from Oregon city to Salem. This, by the organic act, they had power to do. But the law was deemed invalid for another reason, namely, because of multiplicity of contents: *Held*, that the remedy is with Congress.—(5 : 525.)

15. The secretary of the Territory of Oregon having received the salary of governor, during the time he was the acting governor, cannot for the same time receive pay as secretary.—(5 : 507.)

16. The officers of the Territory of Michigan are clothed with the same powers as those of the Territory of Indiana.—(5 : 696.)

17. The term "officers" includes the governor, judges, and secretary.—(*Ibid.*)

18. The reference in the act for the establishment of the Territory of Arkansas to the act relating to Missouri includes the amendments to the latter act.—(5 : 724.)

19. Territorial judges, absent from the Territory for a period of

three months, can obtain their salaries only on certificate of the President that the absence was for good cause.—(6 : 57.)

20. The governor of the Territory of Utah has power to reprieve, but not to pardon, persons indicted and convicted for crime against the United States.—(6 : 430.)

21. The salaries of all judges of courts of the United States are due from the date of appointment, but the party does not become entitled to draw pay until he has entered on the duties of his office, or at least taken his official oath ; for, until then, though under commission, he is not actually in office ; and in some cases, as that of the territorial judges of Oregon, Washington, Kansas, and Nebraska, salary, though due from date of appointment, cannot be drawn until the judge enters on duty in the Territory.—(7 : 303.)

22. The United States cannot take private land for the construction of a road in one of the Territories, without some legal form of expropriation either by act of Congress or of the Territory.—(7 : 320.)

23. The United States never held any municipal sovereignty, jurisdiction, or right of soil in the territory of which any of the new States are formed, except for temporary purposes, namely, to execute the trusts created by deeds of cession of Virginia, Massachusetts, Georgia, and other States in the original common territory of the Union, or by the treaties with France, Spain, and the Mexican republic, in the Territories of Louisiana, Florida, New Mexico, and California.—(7 : 571.)

24. The provisions of the ordinance for the organization of the northwest territory were extinguished by the Constitution, or if any of them retain continuing validity, it is only so far as they may have authority derived from some other source—either the compact of cession, or acts of Congress under the Constitution.—(*Ibid.*)

25. This doctrine has been applied in leading cases to questions touching the property in public lands, the relation of master and slave, religion, and navigable waters, and the eminent domain, and may be taken as the established legal truth.—(*Ibid.*)

26. In obedience to the same principle, and proceeding in the same line of adjudication, it must have been held, if the question had come up for judicial determination, that the provision of the act of March 6, 1820, which undertakes to determine in advance a perpetual rule of municipal law for all that portion of the province of Louisiana which lies north of the parallel of thirty-six degrees and thirty minutes north latitude, was null and void *ab incepto*, because incom-

patible with the organic fact of equality of internal right in all respects between the old and the new States.—(*Ibid.*)

27. The same doctrine controls the question of the relative rights of the United States and of any one of new States, in regard to lands occupied by the United States for public purposes in such State.—(*Ibid.*)

TITLE.

(See *Lands I.*)

1. The Attorney General, in certifying the title of land purchased by the government, must look at the question as one of pure law, and cannot relax the rules of law on account either of the desirableness of the object or the smallness of the value of the land.—(6 : 432.)

TOWN SITES.

1. Portions of the public lands, to the amount of three hundred and twenty acres, may be taken up by individuals or pre-emptioners for city or town sites.—(7 : 733.)

2. The same rules as to proof of occupation apply in the case of municipal as of agricultural pre-emption.—(*Ibid.*)

3. The statute assumes that the purposes of a city or town have preference over those of trade, and still more over those of agriculture. Yet individuals may take for either of latter objects : *a fortiori* they may take for a city or town.—(*Ibid.*)

TREASON.

1. It is treason for a citizen or other person within the United States to abet France during a war with her, unless such person is commissioned under France.—(1: 84, 85.)

2. If a prize ship be regularly commissioned as a ship-of-war, the officers and crew are to be detained as prisoners, except such as are citizens of the United States.—(1: 85.)

TREASURER OF UNITED STATES.

1. The Treasurer of the United States is not subject to execution against his person, goods, nor chattels, nor to any other process, as against a garnishee under the laws of Maryland. Where such process shall have issued, the district attorney may be instructed to move to dismiss it.—(1: 605.)

2. It is the duty of prize agents to deposit all moneys in their hands in the Treasury of the United States.—(6: 197.)

TREASURY DEPARTMENT.

I. GENERALLY.

II. SOLICITOR OF THE TREASURY.

(See *Accounts.*)

I.—GENERALLY.

1. The Secretary of the Treasury has no power to correct an alleged error of a court of the United States and to refund a sum of money said to have been improperly paid in consequence of such alleged error.—(1: 405.)

2. Nor can he increase an allowance made by the Secretary of the Navy, by adding interest thereto.—(1: 605.)

3. It is not the duty of the Secretary of the Treasury to instruct district attorneys in the discharge of duties merely professional.—(1: 608.)

4. If the Secretary of the Treasury is capable of seeing what he does, so that one paper cannot be passed upon him for another, he may impress his name with a stamp or copper plate instead of a pen, provided he keep the stamp or copper plate in his own possession, and apply it himself or cause it to be applied in his presence.—(1: 670.)

5. The Secretary cannot legally pay to the State of Illinois the three per cent. of the proceeds arising from the sales of public lands within the same, reserved under the acts of 18th April, 1818, and 12th December, 1820, unless the account, required by the last mentioned act, indicated that the moneys heretofore paid have been applied to the encouragement of learning within the State of Illinois.—(2: 268.)

6. The exchange of those moneys by the State of Illinois for warrants upon the auditor of the State cannot be considered by the Secretary of the Treasury as an application of them within the meaning of the law.—(*Ibid.*)

7. The act of 3d March, 1797, authorizing the Secretary of the Treasury to remit "fines, forfeitures, and penalties," does not confer the power to release a bond, given to entitle the obligor to drawback, after the same has become an absolute debt to the United States.—(2: 278.)

8. It is not the duty of the Treasury Department to investigate the

facts and circumstances alleged to exist by a surety to a bond given to the United States, and paid, concerning a certain trust fund, in which he claims an interest, created by an assignment of the principal debtor. The question belongs to the judiciary.—(2: 457.)

9. The Secretary of the Treasury may take security from State banks for the safety of the public deposits, in case they shall be made depositories of the public moneys and fiscal agents of the government.—(2: 584.)

10. It is an incident to the general right of sovereignty for the government to enter into contracts not prohibited by law and appropriate to the just exercise of those powers.¹—(*Ibid.*)

11. The act designating and limiting the funds receivable for the revenues of the United States forbids the receipt of any bank notes except of such specie paying banks as shall from time to time conform to certain conditions therein mentioned in regard to small bills, and restrains the Secretary of the Treasury from making any discrimination in this respect between the different branches of the public revenue.—(3: 172.)

12. It leaves the Secretary power to prohibit the receipt of particular notes, provided his prohibition apply to both lands and duties, and to direct what particular notes allowed by law shall be received, provided he can find a deposit bank which will agree to receive and credit them as cash, and not otherwise.—(*Ibid.*)

13. After a fine has been imposed by a collector of customs for a violation of the revenue laws, and collected and distributed under the acts of 3d March, 1797, and 14th July, 1832, or either of them, the Secretary of the Treasury is not authorized to remit it.—(3: 237.)

14. Moneys collected for customs and deposited to the credit of the treasury, but not actually brought into the treasury by covering warrants, are not so blended with the moneys in the treasury as to require a special appropriation by law, in order to apply them to the payment of current expenses, but may be applied as if they had been retained in the hands of the collectors.—(3: 244.)

15. The Secretary of the Treasury has no legal authority to investigate the condition of the banks of Wisconsin Territory, without their consent.—(3: 404.)

16. Nor can he refund moneys deposited for duties with a collector, but which are ultimately found to exceed the amount of duties properly chargeable.—(3: 583.)

¹ United States *vs.* Tingey, 5 Peters, 127.

17. Nor can he refund duties erroneously paid under protest, and which the collector has accounted for.¹—(3: 3.)

18. The Secretary may examine into all the facts and circumstances which constitute the grounds upon which a judgment for losses has been rendered, (relative to Florida claims,) and determine, upon the whole case, whether the decision of the judge is just.—(3: 635.)

19. He may institute the survey of the light-house establishment under the appropriation in the act of May 16, 1842.—(4: 50.)

20. Coupons of the loan of 1842 should be signed by a person acting under the direction of the Secretary of the Treasury.—(4: 143.)

21. Under the act of Congress of March 3, 1843, authorizing the reissue of treasury notes, and for other purposes, whenever outstanding treasury notes, issued in pursuance of the act of 1842, or any previous act of Congress, shall be redeemed before July 1, 1844, other notes may be issued in the place of those redeemed; but the notes outstanding of an earlier issue than 1840 are governed by the law *then* in force, except so far as the act of 1843 authorizes their reissue if redeemed.—(4: 172.)

22. Where certificates of United States stock, with coupons of interest attached, transferable by delivery, have been lost, it is impossible for the Secretary of the Treasury to issue any other security which would be truly its representative or substitute, without a legislative act authorizing what, in such cases, would be equivalent to the issue of new stock.—(5: 66.)

23. But in case of the total destruction of certificates, it is competent for the Secretary to furnish the holder, at the time of the destruction thereof, with new evidence of his claim upon the government.—(*Ibid.*)

24. A valid transfer of certificates of coupon stock, issued under the second section of the act of March 31, 1848, may be made by an endorsement in blank; the object of that part of the section referring to coupons being to enable the certificates to pass by delivery.—(5: 100.)

(See *Claims, Accounts, Loans.*)

25. The Secretary of the Treasury is authorized, by act of September 28, 1850, to indemnify owners of goods for damages caused by improper seizures in the districts of Upper California and Oregon.—(5: 508.)

¹ But see act of February 26, 1845, which restores the right of action against collectors for duties illegally collected.

26. The jurisdiction of the commissioner of customs is not final and exclusive of the jurisdiction and authority of the Secretary of the Treasury; nor does the duty to countersign warrants "which shall be warranted by law," authorize the subordinate officers of the Treasury to supervise or revise the decision of the Secretary.—(5: 630.)

27. The law prescribes no form for the decisions of the Secretary of the Treasury, and they may be rendered in writing or orally.—(5: 664.)

28. Where certain facts are presented, tending to show that a decision was once given by a Secretary, the Attorney General will not undertake to decide whether they are sufficient evidence of such a decision.—(*Ibid.*)

29. It is not competent for the Secretary of the Treasury to review the decisions of a predecessor on claims or accounts, except where mistakes have occurred in matters of fact, and where material new evidence has been discovered.—(*Ibid.*)

30. The Secretary of the Treasury may appoint a person as clerk, to aid in the supervision of the coast surveys, with salary of \$400 per annum, who at the same time holds the office of clerk in the Treasury Department, with a salary of \$1,400 per annum; and the accounting officers should pay such salary.—(5: 765.)

31. On the act of Congress which directed the delivery by the United States of ten millions of dollars in stock to the State of Texas, provided that no more than five millions of said stock be issued until certain creditors of the State should have filed in the treasury releases of all claims against the United States: *Held*, that the Secretary of the Treasury cannot make delivery of the reserved five millions by apportionment, but must withhold all payments until evidence be presented to him of the complete discharge of the United States in the premises.—(6: 130.)

32. Where a sum of money, standing in the name of A., had been enjoined in a suit in equity by B., and by due order not appealed, the injunction was dissolved as to a part of said sum, and its payment ordered to C.: *Held*, that the Secretary of the Treasury might lawfully pay to C. according to such order.—(6: 460)

33. In cases of mere forfeiture or other penalties accruing to the Treasury under the acts of Congress relative to the transportation of passengers, the Secretary of the Treasury may remit, as in similar cases arising under the revenue laws.—(6: 488.)

34. This does not exclude the general power of the President to pardon; and where, under the same passenger laws, personal punish-

ment is inflicted, the case can be reached only through the pardoning power of the President.—(*Ibid.*)

35. In virtue of the acts of Congress, which provide for the execution of the 9th article of the treaty between the United States and Spain for the cession of Florida, which awards damages in certain cases to inhabitants of Florida, the Secretary of the Treasury has lawful authority to determine whether the awards of the judge of the district court of Florida are “just and equitable” or not, and to allow or disallow the same accordingly, at his discretion.—(6 : 533.)

36. The decision of preceding Secretaries of the Treasury that interest is not allowable on such claims is to be considered as *res adjudicata*, and binding on the present secretary.—(*Ibid.*)

37. The Treasury of the United States has no locality, and credits upon it are not *bona notabilia* confined to the District of Columbia.—(6 : 557.)

38. By the treasury regulations, transfer of public stocks held by foreign decedents may be made, on satisfactory proof that the party claiming the right in such stocks is entitled as devisee, distributee, or otherwise according to law.—(7 : 240.)

39. The doctrine of the right of neutrals to purchase the ships of belligerents reaffirmed.—(7 : 538.)

40. The Secretary of the Treasury may regulate in such case the authentication of the bill of sale, which is the highest evidence of the change of property.—(*Ibid.*)

II.—SOLICITOR OF THE TREASURY.

1. It is the duty of the agent of the treasury to instruct district attorneys when, against whom, and for what amount, to institute suits ; when to press the collection and when to indulge ; when, and under what circumstances of additional security, to renew the debts ; what substitution, what commutations, what partial payments, what compromises to accept ; when to acquiesce in the decisions of the courts below, and when to appeal ; always leaving to the learning of the law officer (district attorney) the direction of all measures merely technical and professional.¹—(1 : 608.)

2. The Solicitor of the Treasury may grant indulgences upon custom-house bonds in the form of instructions to district attorneys, who shall have received them for prosecution, in such cases and on

¹ By the act May 29, 1830, the duties of the agent of the treasury are transferred to the solicitor.

such terms as shall be deemed advantageous to the United States.—(3 : 247.)

3. And although the solicitor has no jurisdiction of bonds until they are placed in the hands of district attorneys, he may, in proper cases, give the instructions conditionally in advance, as to the course to be pursued.—(*Ibid.*)

4. The solicitor is charged with such trusts as that created by the assignment of Swartwout's interest in the Maryland and New York Iron and Coal Company, and may do whatever any other trustee may do in a court of chancery.—(4 : 135.)

5. The act of 29th March, 1830, gives to the solicitor *express* authority to dispose of *real estate*, not personal ; but personal is necessarily implied, for *omne majus continet minus*.—(*Ibid.*)

6. The law has invested the Solicitor with a plenary discretion to suspend the execution of a writ of *fieri facias*, under circumstances which appear to render such a course expedient and proper.—(4 : 309.)

7. As the title of M. to land on which the United States have erected a fort at the mouth of Bayou Desprez and Lake Borgne and lands adjoining is invalid, the Solicitor of the Treasury should commence an action in behalf of the government to try the title, as M., being in possession, cannot, if he would, institute a suit against the United States to quiet his claim.—(5 : 402.)

TREATIES.

1. Commissioners to execute a treaty must all agree to the same, subscribe their names and attach their seals thereto.—(1 : 66.)

2. The first treaty of the United States with the Cherokees, at Hopewell, allotted to that tribe the use of the land they occupied. By the subsequent treaties of 1817 and 1828, the rights acquired by the United States inured to the State of Georgia.—(2 : 322.)

3. The President has the power to approve the sale of any of the reserves under the supplement to the Choctaw treaty of 1825, although the same is derived only by construing both instruments together as forming but one treaty.—(2 : 465.)

4. Technical rules of construction ought never to be applied to such treaties, but they should be construed liberally, according to their spirit, and so as to give the Indians all the advantages and facilities in their removal which appear to have been contemplated.—(*Ibid.*)

5. The judiciary cannot arrest the execution of a treaty by stopping the money designed to be paid under it in the hands of the agents of the executive.—(3 : 471.)

6. The schooner *Amistad*, a Spanish vessel, having cleared from one Spanish port bound to another, with regular papers, and a cargo of merchandise and slaves ; and whilst at sea being subjected to the control of the negroes on board, by their rising upon the whites and killing the captain, his servant, and two of his seamen, and assuming command with a view to carry the vessel to the coast of Africa ; but failing in that object, through the contrivance of two white Spaniards, who run her near to the United States, when she was taken by a vessel of the United States and sent into New London for examination and such proceedings as the law of nations warranted and required ; and being demanded, with the negroes, by the Spanish minister, under the ninth article of the treaty of 27th October, 1795, between Spain and the United States: *Held*, that the case is within said ninth article of the treaty, and that the vessel and cargo be restored to the owners, as far as practicable, entire.¹—(3 : 485.)

7. The jurisdiction and authority of the present commissioners,

¹ See 15 Peters' Rep., 518.

under the treaty with the Cherokees, is limited to cases under the treaty which were not disposed of by the former board.—(4: 175.)

8. The allegation that the former board rejected the claim through mistake in nowise affects the question of jurisdiction. If there were a mistake, and a wrong done in consequence of it, the claimant can obtain redress only by an appeal to Congress.—(*Ibid.*)

9. The act of Congress to carry into effect certain provisions in the treaties between the United States and China, and the Ottoman Porte, giving certain judicial powers to ministers and consuls of the United States in those countries, not having designated any particular place for the confinement of prisoners arrested for crime, the same is left for regulation under the fifth section, or, in the absence of any such regulation, to the discretion of the acting functionary.—(5: 67.)

10. The expenses of arrest and support in prison in such cases must be paid from the fund created by the execution of the act.—(*Ibid.*)

11. The provisions of the 18th section do not apply to Turkey.—(*Ibid.*)

12. As the provisions of the act extend to Turkey only in respect to crimes, such crimes are left to support their own expenses.—(*Ibid.*)

13. By the act of 27th February, 1851, it was provided that all Indian treaties thereafter negotiated should be negotiated only by such officers and agents of the Indian department as the President should designate for that purpose.—(5: 305.)

14. That act applies as well to treaties authorized to be negotiated, but not concluded at the date of its passage, as to those not then authorized. It peremptorily required all Indian treaties thereafter to be made to be negotiated by the agents and officers designated by the law.—(*Ibid.*)

15. Hence the commissioners to negotiate treaties with the Mississippi and St. Peter Sioux and half breeds for the extinguishment of their title to lands in Minnesota, appointed on the 1st of February, 1851, were superseded by the said law.—(*Ibid.*)

(See *Law of Nations, Indians.*)

16. The statute provision for the surrender of deserting seamen applies only to the seamen of governments with which a treaty exists to that effect.—(6: 148.)

17. There is no express provision to that effect in existing treaties between the United States and Denmark.—(*Ibid.*)

18. Engagements of extradition, whether of fugitives from justice or from service, stand in each case on particular stipulations of treaty

and are not to be inferred from the "favored nation" clause in treaties.—(*Ibid.*)

19. A treaty, constitutionally concluded and ratified, abrogates whatever law of any one of the States may be inconsistent therewith.—(6: 291.)

20. *Semble.* A treaty, assuming it to be made conformably to the constitution in substance and form, has the effect, under the general doctrine that "*leges posteriores priores contrarias abrogant*," of repealing all pre-existing federal law in conflict with it, whether unwritten as law of nations or admiralty, or written as legislative statutes.—(*Ibid.*)

21. At any rate, if the effect of a treaty on existing statutes admit of doubt, Congress never has failed to pass the acts requisite to give effect to any treaty not containing provisions incompatible with the Constitution.—(*Ibid.*)

22. Such provisions of the proposed convention between the United States and Great Britain on the subject of copyright as are inconsistent with existing provisions of acts of Congress, either abrogate the latter, or if not, on the ratification of the convention they will be repealed by Congress.—(*Ibid.*)

23. Constructive larceny, consisting of embezzlement of the money of a bank by one of its officers, is not among the causes of extradition provided for by treaty between Great Britain and the United States.—(6: 431.)

24. Not to observe a treaty is to violate a deliberate and express engagement. To violate such engagements of a treaty with any foreign power affords, of course, good cause of war. When Congress takes upon itself to disregard the provisions of any foreign treaty it, of course, infringes the same, in the exercise of sovereign right, and voluntarily accepts the *casus belli*, as when, in 1798, it annulled the treaties between the United States and France.—(6: 658.)

25. There is distinction, undoubtedly, between a treaty with a foreign power and a treaty with Indians who are subjects of the United States. Examples may be cited of acts of Congress which operate so as to modify or amend treaties with Indians. As their sovereign and their guardian we have occasionally assumed to do this, acting in their interest and our own, and not, in such cases, violating engagements with them, but seeking to give a more beneficial effect to such engagements. For though they be weak, and we strong—they subjects and we masters—yet they are not the less entitled to the exercise towards

them of the most scrupulous good faith on the part of the United States.—(*Ibid.*)

26. Under the treaty between the United States and Great Britain of June 5, 1854, the President cannot issue his proclamation giving effect to the treaty as to Canada alone in anticipation of the action of New Brunswick, Nova Scotia, and Prince Edward's island ; nor until he shall have received evidence, not only of the action of those provinces but also of the imperial Parliament.—(6 : 748.)

27. The Choctaws and Chickasaws, who, in 1837, formed a political union by an agreement between the two nations, submitted to and ratified by the Senate of the United States, cannot dissolve that union except in like manner by convention approved by the Senate and the President of the United States.—(7 : 142.)

28. By treaty between the United States and Great Britain, the expense attending the proceedings in extradition is to be borne by the government making the reclamation.—(7 : 396.)

29. But where, in consequence of conflict between the judicial authorities of the United States and those of a State, the latter aiming to prevent the extradition, the United States intervenes to maintain its own dignity in the premises, the special expenses of such intervention should be defrayed by the United States.—(*Ibid.*)

30. Citizens of the United States, in common with all other foreign Christians, enjoy the privilege of extraterritoriality in Turkey, including Egypt ; the same in the Turkish regencies of Tripoli and Tunis ; and also in the independent Arabic states of Morocco and Muscat.—(7 : 565.)

31. By the terms of the Mesilla treaty, seven millions of dollars were to be paid to the Mexican republic on the exchange of ratifications, and three millions were to become due when the new boundary line should be surveyed, marked, and established.—(7 : 582.)

32. The "establishment" of the line consists of the official agreement of two commissioners, appointed, one by each government, to survey, mark, and establish the line ; and that agreement, when duly made, is conclusive against both governments.—(*Ibid.*)

33. According to the public law of the monarchies of Europe, the authority of ministers, and perhaps of international commissioners, expires on the death, deposition, or abdication of the prince ; but not so as between the American republics, in which the executive power is permanent and continuous, without regard to the governing person, and there is no interruption of the authority or renewal of the

credentials of their public ministers on a change of President for whatever cause, provided such President continues to represent and exercise the appointing power of the government.—(*Ibid.*)

34. The United States observe, as their rule of public law, to recognize governments *de facto*, and also governing persons *de facto*, without scrutiny of the question of legitimacy of origin or accession.—(*Ibid.*)

35. Hence, in this case, the Mexican commissioner, Mr. Salazar, being duly appointed by President Santa Anna, continued to be competent to act after the sequent accession of President Carrera, and his official agreement signed then, if otherwise regular and complete, definitively establishes the line as respects the Mexican republic.—(*Ibid.*)

36. To establish the line, it is not requisite that the maps contemplated by the treaty shall first have been made; that is not the establishment of the line, but only the record or history of its survey.—(*Ibid.*)

TRUSTEE PROCESS.

(SEE PROCESS.)

UNITED STATES.

1. A prior lien on a policy for the premium of an insurance is overreached by the right of preference of the United States, even though the preference be founded on a subsequent act of insolvency.—(1: 616.)—2 Wheat., 396.

2. The United States have such a claim to lands formerly used for a highway in Charleston, by force of proceedings under the act of the legislature of Massachusetts of 30th of October, 1781, and for other reasons, that it ought to be defended.—(2: 363.)

3. The rights of the United States will not be impaired by the receipt of such part of the dividend declared and payable on the stock of the government in the bank of the United States as the bank is willing to pay.—(2: 710.)

4. Where one of two partners had given bonds with sureties to the United States for duties on merchandise imported by the firm upon which there was subsequently found to be due the sum of \$30,000, and deeds of trust to a third person were afterwards executed, conveying, among other property and claims, a certain debt due the firm from the government of Naples on account of the seizure of a schooner and cargo in which they had an interest, which, under the convention of the King of the two Sicilies, had been awarded to them, and now claimed and demanded by the trustees under the deeds of trust, they alleging that the debt of the United States for duties had been extinguished by the taking of the bond of one partner with sureties: *Held*, that, notwithstanding the decision of Judge Washington in the case of the *United States vs. Astley & Brooks*, the debt remains against the firm, and must be first deducted from the amount awarded to them before payment can be made to them or their assignees.—(2: 718.)

(See *Prerogative*.)

5. The cargo of the United States, shipped at Alexandria for Valparaiso, on board a vessel forced by stress of weather to throw overboard a portion of her freight to lighten her, and then to put back to Norfolk, incurring expenses of the nature of general average, is bound to contribute to the general average; but while such is the

opinion of the Attorney General, there are reasonable doubts respecting some of the charges in the case under consideration.—(5 : 757.)

6. All collections of objects of natural history and the like, and all field-notes or other like local information, taken or obtained by any public officer, civil or military, *in the line of his duty*, belong to the government.—(6 : 599.)

7. But officers of the government, civil or military, may lawfully make collections and take notes for their own use; provided the same be done without neglect of public duty or expense to the government; and provided also, that it be done without violation of superior order in their respective departments.—(*Ibid.*)

8. The United States are not responsible in damages for moneys illegally received by consuls, or for any other act of malfeasance of theirs' in office.—(6 : 617.)

9. When a commissioned officer or other agent of the United States makes a contract with any person for their use and benefit, and with due authority of law, such officer or other public agent is not responsible to the party, whose only remedy is against the government.—(7 : 88.)

10. But, in making contracts with any one claiming to act for the government, it is the duty of the party contracting to inquire as to the authority of such agent or officer, without which it is doubtful whether the contract affects the government.—(*Ibid.*)

11. If a public officer, however, make a government contract without authority, and which, therefore, does not bind the government, such officer is himself personally responsible to the contracting party.—(*Ibid.*)

12. But a public officer or other agent, though contracting for the government, may, if he see fit, make himself the responsible party, either exclusively or in addition to the government.—(*Ibid.*)

13. The United States may lawfully make title to land in one of the States by expropriation as of the eminent domain of such State, and with assent thereof.—(7 : 114.)

14. The act of the legislature of Maryland, empowering the United States to acquire land in said State, for the use of the Washington aqueduct, is not in conflict with the Constitution either of that State or of the United States.—(*Ibid.*)

15. The acquisition of land by the United States, through the means of a statute process of expropriation, "is a purchase," which, if done in strict accordance with the form of the statute, may be

certified by the Attorney General as vesting a valid title in the United States.—(*Ibid.*)

16. In its internal organization, each government has public officers, administrative, judicial, or ministerial, which officers are the agents of the community for the conduct of its public or common affairs, and of many private affairs, and are individually responsible to their country, and in many cases to individuals, for acts of political or official misbehaviour; but the government itself is not responsible to private individuals for injuries sustained by reason of the acts of such officers in the private business with which they may be officially concerned, though as public agents, yet for individual benefit only; it is responsible only for such injury to individuals as may occur by acts of such officers performed in the proper behoof and business of the government.—(7: 229.)

17. Thus, governments hold themselves responsible to individuals for injuries done to the latter by public officers in the collection of the revenue or other administrative acts of governmental relation; but not for the errors of opinion, or corruption even, of administrative, judicial, or ministerial officers, when such officers are administering their public authority in the interest of individuals as distinguished from the government.—(*Ibid.*)

18. Hence, the State of California is not responsible to a citizen of the United States for injury which his vessel may have sustained by the unskilfulness of a pilot at San Francisco; and *a fortiori* that State is not responsible in such case if the vessel belonged to a citizen of the Peruvian republic.—(*Ibid.*)

19. Hence, also, the United States are not responsible to a citizen of the United States for the failure of a marshal to collect an execution; and *a fortiori* the United States are not responsible in such case if the execution belonged to a citizen of the Peruvian republic.—(*Ibid.*)

20. In such a case, our courts of law are open to the individual who pretends himself aggrieved by the act of the pilot or that of the marshal; but the government is not surety for their acts; and the Peruvian republic has no rights of reclamation in the premises against the United States for any imputed default either of its own officer or the officer of the State of California.—(*Ibid.*)

21. Query, whether the property in the West Point chain is or is not in the United States.—(7: 311.)

22. Jurisdiction is acquired by the United States by the consent of a State to the purchase of land within the same for constitutional uses of the Union.—(7: 628.)

23. Phrases in legislative acts of the States retaining concurrent jurisdiction for certain purposes do not impair the federal jurisdiction conferred by the Constitution.—(*Ibid.*)

U S A G E .

1. It having been the usage of the War Department to require of States, which were entitled to reimbursements, such as are provided for in the act of 2d June, 1848, to furnish proof of actual expenditure of money, and of the purpose to which it was applied, it is to be presumed that Congress in that act expected such usage to be followed.—(5: 562.)

2. Adherence to established rules prevents the arbitrary action of the executive branches of the government, and produces certainty and equality, at least, in their administrations.—(*Ibid.*)

VESSEL.

1. Where a vessel, foreign-built, was wrecked in the United States and afterwards purchased and repaired by a citizen of the United States: *Held*, that the expense of getting such vessel afloat, and in a proper position for being repaired, should be taken into account in deciding whether the repairs put upon such vessel shall be equal to three-fourths of the cost of said vessel when repaired.—(5: 674.)

2. By the fourth section of the 30th August, 1852, vessels which are required to have two, three, four, or six life-boats, must have one of metal, fire-proof.—(5: 676.)

3. By the ninth section of said act, public vessels of the United States, or vessels of other countries; steamers used as ferry-boats, tug-boats, and towing boats; and steamers not exceeding one hundred and fifty tons burden, which are used in whole or in part for navigating canals, are exempted from inspection.—(*Ibid.*)

4. In order that the master of a ship, on her "arrival" in a foreign port, shall be compellable to deposit the ship's papers with the consul, the arrival must be such an one as involves entry and clearance.—(6: 163.)

5. Demurrage may be either *ex contractu* or *ex delicto*; in either case it is a recompense fixed upon the deliberate consideration of all the circumstances attending the usual earnings and expenditures of a ship in common voyages; and has reference to her expenses, such as wages and provisions, wear and tear, and common employment.—(6: 285.)

6. In the case of delay of a ship employed in the transportation of troops for the United States, under circumstances which would be demurrage in ordinary contracts of affreightment, the Secretary of War may allow compensation in the nature of demurrage or by implied contract of the department.—(*Ibid.*)

7. A registered or enrolled American vessel, voluntarily sold by her owner to a foreigner, and thus denationalized, is, equally with a foreign built ship, incapable of receiving a new register or enrolment, although afterwards purchased and wholly owned by a citizen of the United States.—(6: 383.)

8. Vessels propelled by steam, and employed in the transportation

of passengers by sea between Panama and San Francisco, are within the provision of the acts of Congress regulating the transportation of passengers in merchant vessels.—(6: 393.)

9. The pardoning power of the President extends to all cases of penalties and forfeitures, as well as other punishment, provided by those acts.—(*Ibid.*)

10. In certain cases, under those acts, forfeitures may be remitted by the Secretary of the Treasury.—(*Ibid.*)

11. Consuls have no authority to order the sale of a ship in a foreign port, either on complaint of the crew or otherwise.—(6: 617.)

12. If, on such sale, a consul retains money for the payment of seamen's wages, he acts at his own peril, and is responsible to the owners.—(*Ibid.*)

13. A sea-letter, given to a foreign merchant vessel by the commander of a ship-of-war in time of war, does not convert such vessel into American property.—(6: 630.)

14. A Frenchman, commercially domiciled in the Mexican republic during the war between that republic and the United States, who sailed his vessel under a license or letter of protection from the commander of an American ship-of-war, and who was afterwards prosecuted and subjected to loss on that account by the Mexican government, cannot be redressed by the United States.—(*Ibid.*)

15. Belligerent ships-of-war, privateers, and the prizes of either, are entitled, on the score of humanity, to temporary refuge in neutral waters from casualties of the sea and land.—(7: 122.)

16. By the law of nations, belligerent ships-of-war, with their prizes, enjoy asylum in neutral ports for the purpose of obtaining supplies or undergoing repairs, according to the discretion of the neutral sovereign, who may refuse the asylum absolutely, or grant it under such conditions of duration, place, and other circumstances, as he shall see fit, provided that he must be strictly impartial in this respect towards all the belligerent powers.—(*Ibid.*)

17. Where the neutral State has not signified its determination to refuse the privilege of asylum to belligerent ships-of-war, privateers, or their prizes, either belligerent has a right to assume its existence, and enter upon its enjoyment, subject to such regulations and limitations as the neutral State may please to prescribe for its own security.—(*Ibid.*)

18. The United States have not by treaty with any of the present belligerents bound themselves to accord asylum to either ; but neither have the United States given notice that they will not do it ; and of

course our ports are open, for lawful purposes, to the ships-of-war of either Great Britain, France, Russia, Turkey, or Sardinia.—(*Ibid.*)

19. A foreign ship-of-war, or any prize of hers in command of a public officer, possesses, in the ports of the United States, the rights of extritoriality, and is not subject to the local jurisdiction.—(*Ibid.*)

20. A prisoner of war, on board a foreign man-of-war, or her prize, cannot be released by *habeas corpus* issuing from courts either of the United States or of a particular State. But, if such prisoner of war be taken on shore, he becomes subject to the local jurisdiction or not, according as it may be agreed between the political authorities of the belligerent and the neutral power.—(*Ibid.*)

21. Masters of American vessels cannot lawfully discharge seamen in foreign ports without intervention of the consul.—(7: 349.)

22. It does not help the matter to allege that the seamen consent, or have misconducted themselves, or are not Americans; of all that it is for the consul to judge.—(*Ibid.*)

23. Masters of American vessels are subject to prosecution in the name of the consul for omission to deposit with him the papers according to law, but not to indictment.—(7: 395.)

24. The act of March 3, 1855, regulating the carriage of passengers in steamships and other vessels, and imposing penalties and punishment for contravention, is made applicable to ships abroad in sixty days in Europe, and six months in other parts of the world; and requires notice of the act to be given in all foreign ports through the Department of State: *Held*, that where such notice had failed to be given in such foreign port, and the owner or master of a vessel had thus unconsciously offended, it was proper case for remission of forfeiture and for pardon of the master.—(7: 489.)

25. The doctrine of the right of neutrals to purchase the ships of belligerents reaffirmed.—(7: 538.)

26. The Secretary of the Treasury may regulate in such case the authentication of the bill of sale, which is the highest evidence of the change of property.—(*Ibid.*)

27. Shipmasters in foreign ports are subject, on the requisition of the consul, to take on board and convey to the United States distressed mariners; but not seamen or other persons accused of crimes, and to be transported to the United States for prosecution.—(7: 721.)

28. Officers and crews of the public ships of the United States are not entitled to salvage, civil or military, as of complete legal right.—(7: 756.)

29. The allowance of salvage, civil or military, in such cases, like

the allowance of prize money on captures, is against public policy, and ought to be abolished in the sea service, as it was long ago in the land service.—(*Ibid.*)

VICEROY.

(SEE MINISTER.)

VIRGINIA.

1. The United States have assumed all unsatisfied outstanding military land warrants of the State of Virginia, issued by the proper authorities thereof, for revolutionary services of its officers, soldiers, seamen, and marines, such warrants having been fairly and justly issued in pursuance of the laws of the State.—(6: 243.)

2. Persons, called in the laws of Virginia “supernumerary officers,” and in the resolves of Congress “deranged officers,” are to be treated as in service, and warrants, issued to them by the State for additional land on account of such services, are entitled to be exchanged for land scrip of the United States.—(*Ibid.*)

(See *Lands.*)

WAR DEPARTMENT.

1. The Secretary of War is not required to perform duties in the field. He does not compose any part of the army, and has no service to perform that may not be done at the seat of government. If he leaves the seat of government for the seat of war, by order of the President, for military purposes, he may be paid the expenses of the tour, otherwise not.—(1: 457.)

2. It is immaterial who proposed such service; if the President adopted the measure, the Secretary should be paid the expenses.—(1: 493.)

3. Lieutenants in the artillery and marine corps may be exchanged with their own assent, where the ranks of other officers will not be interfered with nor prejudiced; but such exchanges can be effected only by the action of the appointing power of the President by and with the advice and consent of the Senate; and will not be made unless the good of the service requires it.—(2: 355.)

4. Under the act of 3d March, 1825, the President, only, has power to cause ordnance, arms, ammunition, &c., unfit for public service, upon proper inspection and survey, to be sold; and to that end, a method of effecting the sale has been prescribed by the Secretary of War, by which the property must be offered first at public auction.—(2: 580.)

5. The payment of army contingencies is authorized by law; and as Congress has not defined in the law itself what those contingencies are, the Secretary of War must be admitted to possess a very liberal discretion on the subject.—(3: 84.)

6. If the allowances made by the Secretary of War, prior to the 3d March, 1835, to officers of the army, from the appropriation for army contingencies, were really for contingencies, they were authorized by law.—(*Ibid.*)

7. The Secretary of War, in the ordinary execution of his public duties, cannot employ and compensate collectors, &c., in the revenue service, for disbursing moneys appropriated for topographical purposes.—(4: 401.)

8. But he is vested with a discretion which authorizes him to allow to the sub-agent for the Indians west of the Rocky mountains, for

such expenditures, not previously authorized, as he *might have* previously authorized as proper.—(4: 477.)

9. All enlistments in the regular army are required to be for the term of five years; and no discretion has been conferred to contract for such service either conditionally or for a shorter term.—(4: 537.)

10. The enlistment of minors over eighteen years of age into the military service, without the consent of parents or guardians, having been authorized by the act of 10th December, 1814, which repealed so much of the 5th section of the act of 20th January, 1813, as required the previous consent in writing of parents, guardians, or masters, &c., the Secretary of War is not required to discharge minors who, at the time of enlistment, had no parents or guardians.—(5: 313.)

11. In order to effect the discharge of minors who, having parents or guardians, enlisted without their consent, it is necessary that such parents or guardians concur in the application. Therefore, minors having parents or guardians, and enlisting without their consent, are not entitled during their minority to make proof and claim their own discharge.—(*Ibid.*)

12. The appropriation for a military asylum for the relief and support of invalid and disabled soldiers of the army of the United States, made by the act of 3d March, 1851, includes the unclaimed extra pay allowed to soldiers by the 5th section of the act of 19th July, 1848.—(5: 385.)

13. It is to take effect, however, only according to the provisions of the 7th section of the act, and to be afterwards repaid by the commissioners of the asylum upon demand of the heirs or legal representatives of the deceased.—(*Ibid.*)

14. The act establishing the military asylum does not constitute the commissioners a corporation, with capacity to sue and be sued.—(5: 398.)

15. By the act of March 3, 1819, providing for the sale of such "military sites" as are found useless for military purposes, the Secretary of War is authorized to sell *a part* of the land included in the site of the armory at Harper's Ferry.—(5: 549.)

16. It having been the usage of the War Department to require of States which were entitled to reimbursements, such as are provided for in the act of June 2, 1848, to furnish proof of actual expenditure of money, and of the purpose to which it was applied, it is to be presumed that Congress in that act expected such usage to be followed.—(5: 562.)

17. Military punishment cannot be inflicted after June 1, 1821, on those who do not then constitute a part of the peace establishment under the act of March 2, 1821.—(5: 735.)

18. Military storekeepers are subject to removal from office at the discretion of the President of the United States.—(6: 4.)

19. Military storekeepers are all of one grade, and alike subject, as to their place of duty, to the orders of the Secretary of War.—(6: 7.)

20. Provision of statute exists by which the statute regulations of the army may, within certain limits, be altered by the Secretary of War, but there is no such provision in regard to the statute regulations of the navy.—(6: 10.)

21. The Secretary of War is not under obligation by law to discharge minors from the army on the application of alleged parents or guardians not domiciled in the United States.—(6: 607.)

22. Under the acts of February 11, 1847, and July 19, 1848, no promotion in the Quartermaster's Department can be made from the grade of assistant quartermaster to that of quartermaster until the number of officers in the latter shall be reduced by vacancies occurring, so that the sum total of the grade shall not exceed the statute standard of the peace establishment of the United States.—(7: 108.)

23. Army sutlers are not subject to a license in the State of California on sales made by them to officers or soldiers of the army, nor to tax on goods kept by them at a military post for that purpose; but sutlers may be compelled to pay license if they enter into general trade within the State.—(7: 578.)

WASHINGTON CITY.

1. The act of July 16, 1790, for establishing the seat of government of the United States, authorized commissioners, who were to be appointed by the President, to purchase or accept such quantity of land on the eastern side of the Potomac, within the District of Columbia, as the President should deem proper for the use of the United States; and by a liberal construction of that provision, only, has it been claimed that the President had power to establish a plan of the city; but the deeds of the original proprietors require the trustees appointed by them to convey to the commissioners such streets, squares, parcels, and lots as the President should deem proper. In pursuance of the power thus conferred, President Washington, in 1797, executed an instrument of writing, in which he directed the trustees to convey to the commissioners all the streets delineated in a plan intended to be, but not, annexed. President Washington having previously ratified Ellicott's engraved plan of the city, it must now be presumed that Ellicott's plan was what he intended to annex; and that, as it indicated streets through the mall, it was originally intended that streets might be opened through it.—(1: 416.)

2. Although President Adams subsequently gave his sanction to another plan, said by the commissioners to have been annexed, which did not indicate streets through the mall, the promulgation, publication, and exhibition of Ellicott's plan, on the day of sale of lots, amount to a pledge of the public faith that the streets thus indicated should be opened.—(*Ibid.*)

3. The corporation of the city of Washington has power to establish a board of health, to make regulations for the preservation of health, to open all necessary drains, and to do every act which the health of the city may require; and to lay taxes, &c., for the purpose of defraying the expenses.—(1: 615.)

4. The act of May 7, 1822, specially authorized the draining and filling up of the low grounds near Tiber creek and the canal, and appropriated funds for that purpose.—(*Ibid.*)

5. Although the corporation of Washington have the power by their charter, with the approbation of the President of the United

States, to draw lotteries, the amount to be thus raised cannot exceed \$10,000 in any one year.—(1 : 720.)

6. If the corporation has not improved this provision during any former years, the right to do so for those years has gone; for the President during those years only had the right to judge of the expediency of a lottery or lotteries by the circumstances then existing.—(*Ibid.*)

7. The power is a limited one and must be exercised as specified in the charter.—(*Ibid.*)

8. A surveyor of Washington who is appointed by the Commissioner of Public Buildings, with the understanding that no salary is to be claimed, cannot receive any pay out of the fund appropriated for the District.—(2 : 471.)

9. But the President is advised to make an unconditional appointment of surveyor, leaving the necessity of the office to Congress, which will apply the remedy, if it be unnecessary, and the salary be too great.—(*Ibid.*)

10. The power to grade the streets in the city of Washington is in the corporation, not in the Commissioner of Public Buildings, and can be exercised only under its authority.—(2 : 541.)

11. Congress did not grant to the Baltimore and Ohio Railroad Company the right to pass through the public reservations in the city of Washington, the same not being included in the “other squares and lots” in the city.

12. The Secretary of the Treasury may give to the corporation of Washington the certificate described in the seventh section of the act vesting in that corporation the rights of the Canal Company, passed 31st May, 1832, notwithstanding the work was not completed by the 1st March, 1833; provided the work has been finished in the manner prescribed, and the time when it was actually completed be stated.—(3 : 290.)

13. Repairs in front of leased tenements in the city of Washington are, by the corporation act of 1st August, 1831, required to be made by the owners, who are, in general, the lessors; and where the leases are silent upon the subject of such repairs, the law regulating repairs in the District may properly be considered and taken as a part of the contract.—(3 : 496.)

14. The inspectors of the penitentiary in the District of Columbia have, notwithstanding the authority conferred on the warden by the act of 25th February, 1831, the responsibility and duty of a general superintendence and management of the institution; and it belongs

to them to limit the number of subordinate officers and servants, and to regulate their salaries.—(5 : 128.)

15. In them, and not in the warden, is vested the authority to appoint the physician and chaplain, they not being “inferior officers” within the meaning of the law.—(*Ibid.*)

16. The act of 1820 pledged the proceeds of sales of public lots in the city of Washington to the payment of certain expenses to be incurred by the corporation in making certain improvements; wherefore, the funds in the treasury derived from that source should be applied to reimburse certain advances made by the corporation, notwithstanding the act of 17th May, 1848.—(5 : 151.)

17. The commissioners appointed under the act of 16th July, 1790, to purchase or accept a site for the seat of government of the United States, had no power to convey any lands in the city of Washington which had been appropriated as a public reservation for the use of the United States: *Held*, therefore, that the conveyance of such commissioners, made on the 25th May, 1798, of a part of the President's square to the minister of Portugal, in behalf of his government, was void, though approved by the President.—(5 : 464.)

18. The non-user of the land so granted, by any minister of Portugal, for fifty years and more next after the date of the deed, supports the inference that the want of authority to make the grant was known to and acquiesced in by the grantee.—(*Ibid.*)

19. Consideration of a bill for the relief of George Mattingly, presented to the President for his approval.—(6 : 336.)

20. The United States may lawfully make title to land in one of the States by expropriation as of the eminent domain of such State, and with assent thereof.—(7 : 114.)

21. The act of the legislature of Maryland, empowering the United States to acquire land in said State for the use of the Washington aqueduct, is not in conflict with the constitution either of that State or of the United States.—(*Ibid.*)

22. The acquisition of land by the United States through the means of a statute process of expropriation is a “purchase,” which, if done in strict accordance with the form of the statute, may be certified by the Attorney General as vesting a valid title in the United States.—(*Ibid.*)

23. At the foundation of the government's title to city lots in the city of Washington are trust deeds from the original proprietors of the land to Thomas Beall and John M. Gantt, who thus held the fee in trust for the original proprietors and for the United States.—(7 : 355.)

24. By force of a legislative act of the State of Maryland of 1791, the fee of these lots became vested in the several cestui que trusts, whether the original grantors, the United States, or purchasers under either.—(*Ibid.*)

25. By force of the same act of the State of Maryland, as construed by subsequent acts of Congress, the power to convey the government lots became vested in different statute officers of the United States, namely, first, a Board of Commissioners, then a Superintendent, and, finally, the Commissioner of Public Buildings.—(*Ibid.*)

26. All conveyances heretofore made by the Board of Commissioners, the Superintendent, or the Commissioner, suffice to pass the title, provided the conveyances were otherwise valid, and the sales were made by the direction of, and in the time and manner prescribed by, the President of the United States.—(*Ibid.*)

27. The same power is held by the present Commissioner.—(*Ibid.*)

W H A R V E S.

1. So long as the law of Maryland, and the order of the commissioners under it, remain unrepealed, the wharves proposed to be built by the owners of water-lots on the Potomac and Eastern Branch must follow the direction of the present streets of the city, and cannot be projected at right angles from Water street to the channel.—(1 : 223.)

WILLS.

1. The validity of a will to pass personal estate in this country depends on the law of the place in which it was made.—(1: 382.)

2. By the civil law an executor, *eo nomine*, is not essential to the validity of a will; the institution of an universal heir, who stands in the place of an English executor and residuary legatee, being sufficient.—(*Ibid.*)

3. It is the settled practice to admit the authority of letters testamentary, regularly issued by courts of probate in the several States, in adjusting demands upon the government.—(1: 634.)

4. A legatee under a will made in France cannot maintain a suit in equity in the courts of the United States without probate first had of the will in the proper courts of this country.—(2: 168.)—12 Wheat., 169.

5. Where a person entitled to bounty land died before he received it, leaving two heirs-at-law and a will devising certain other of his real and personal estate to one, to be in full for all interest in his estate: *Held*, that the other takes the bounty land by implication.¹—(2: 535.)

6. The right of Indian reservees under treaty with the Miamies to devise land by will is doubtful, being liable to greater objections than an ordinary transfer by deed.—(2: 631.)

7. Soldiers entitled to bounty lands under the act of February 11, 1847, but who have not received warrants therefor, cannot dispose of their rights to such land or scrip by will.—(5: 237.)

8. The question of the validity and of the formal parts and operation of a will made in the District of Columbia, as it now exists, mainly depends on the laws of the State of Maryland.—(7: 47.)

9. In order that a devise of real estate shall be effective on lands situated in the District of Columbia, such devise must have been executed in conformity with the statutes of the State of Maryland.—(*Ibid.*)

10. The distribution of the personal effects of a decedent situated in the District is governed by the *lex domicilii*, not the *lex loci rei sitæ*.—(*Ibid.*)

¹ Quincy vs. Rogers, 9 Cush., (Mass.), 291.

WISCONSIN.

1. By an act of Congress, passed in 1833, 138,996 acres of land were granted to Wisconsin, in aid of a canal, on the condition that if it was not completed within ten years, the State should be liable to the United States for all moneys received upon the sale of the land, at a rate not less than \$2 50 per acre. After disposing of all but 13,564 acres, the canal was incomplete and its construction abandoned: *Held*, that for all the land so disposed of, the State was responsible to the United States in money, which a deduction from the 500,000 acres granted in 1841 could not off-set.—(5 : 574.)

2. By compact between the United States and the State of Wisconsin, when the latter was admitted into the Union, it was agreed that the United States would pay to the State five per cent. of the net proceeds of the sale of public lands within the same, for the use of its schools, provided that certain liabilities of the Territory of Wisconsin, on account of lands granted by the United States for canals therein, shall be paid and discharged by the State: *Held*, that the United States can make a set-off of the five per cent. school fund to pay the canal debt, because the former is a special trust fund; but that the United States may retain the money in trust itself until the State discharges its obligation in the other respect to the United States.—(6 : 732.)

WITNESSES.

1. Witnesses imprisoned on account of their inability to give security for their appearance at court are not entitled to any compensation beyond the one dollar and twenty-five cents a day, *for attending court*, and five cents a mile for travelling expenses, allowed in act of February 28, 1799.—(1 : 344.)

2. That act provides only for witnesses “summoned in court, attending in court;” and unless it be in session there is no court in which, or upon which, they can attend. Witnesses detained, in order that they may be in attendance when the time for a session of court shall arrive, cannot be considered in attendance in or upon the court. They earn their compensation only by attending where they shall be in the power of the court whensoever it shall be necessary to call for their testimony.—(1 : 425.)

3. In a public prosecution the law regards the time of a witness as not lost to himself, but bestowed upon the interests of the community of which he is a member, and therefore he may be considered as being, in some degree, employed for himself. If paid by the marshal all the compensation which Congress has seen fit to make, he cannot obtain anything more. Payment for detention for want of bail has not been provided; and, until it shall be, no marshal can legally make any allowance therefor; nor can any allowance therefor be passed by the officer who shall settle his official accounts.—(*Ibid.*)

4. The “reasonable contingent expenses” that may accrue in holding courts, which marshals are allowed to pay, are only those that arise in holding the court; not on account of the criminal jurisdiction of the court, or the necessity of the attendance thereon of particular witnesses, but of the “holding court” according to appointment at the specified time and place.—(*Ibid.*)

5. The President has no authority to allow extra witness fees to a person who appeared as witness for the claimant in the reclamation of a fugitive from service, examined before a United States commissioner in the State of Massachusetts.—(6 : 356.)

